RECOLLECTIONS
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AN AUTOBIOGRAPHY

PART
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CHIMANLAL H. SETALVAD

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PREFACE

The idea of publishing my reminiscences originated on board the S. S. Narkunda in December 1931, when myself and some other delegates to the Second Round Table Conference were returning to India. One afternoon at lunch, Sir Cowasji Jehangir, Sir Purshottamdas Thakurdas, Mr. G. N. Joshi and myself were talking about law and law courts and I narrated to them some of my experiences and recalled certain notable occasions on which the High Court and its predecessor the Supreme Court protected the liberty of the subject. My friends assured me that my reminiscences of the Bar would be very interesting and they desired that I should write them. When I reflected on the suggestion I felt that I could not confine myself to the field of law and that my reminiscences should extend to various other spheres of public activity in which I had taken part for many years—the University, the Municipal Corporation, legislatures and politics.

I soon realised the very arduous nature of the task for two reasons. I had no recorded diaries, nor any regular file of letters and papers. It meant taxing my memory to recall incidents and experiences extending over a period of more than five decades and further there was the difficulty of verifying my recollections by reference to available records and other sources. I naturally hesitated to take up the work. But some of my friends prevailed upon me not to give up the idea. Mr. G. N. Joshi often reminded me about it and so did Mr. (now Justice) M. C. Chagla. Sir Sajba Rangnekar as recently as 1941 very kindly offered to be my biographer if I furnished him with the relevant material. This was, of course impossible in view of the non-existence of connected documents or recorded notes. Therefore, the only alternative left was to attempt the task myself. I am conscious of the shortcomings of the production under the circumstances and I crave the indulgence of the reader for

the same. It has been remarked that writing reminiscences can be a dangerous occupation. I have scrupulously tried to avoid pitfalls and it has taken me nearly two years to give effect to the suggestion so kindly made by my friends. My narrative includes an unvarnished story of a busy and active life embracing different fields of activity apart from the legal profession and contains my own views of men and matters during the most eventful and exciting period of the history of the motherland. My consolation is that I have always served my country according to my lights and without malice to any one. If the readers think that on the whole—barring inevitable and unconscious mistakes—I have produced a realistic and instructive record of my life I shall feel amply rewarded.

I take this opportunity to thank several friends in the various branches of the legal profession who have assisted me in the verification of facts and events. Mr. G. N. Joshi was particularly helpful to me. My thanks are due to Mr. Frank Moraes of the *Times of India* who went through the tedium of correcting a part of the proofs.

Last but not least my grateful thanks are due to Mr. V. R. Bhende, Assistant Secretary of the National Liberal Federation but for whose devoted, sincere and intelligent help during the whole period of the preparation of this volume, I would never have been able to produce it.

Bombay, C. H. SETALVAD

February 1, 1946

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ILLUSTRATIONS

PART 1 EARLY LIFE

1. - - - - - - EARLY LIFE

I WAS born in July 1865 in the City of Broach. This is a statement based on hearsay and therefore inadmissible in evidence, according to a learned judge who declined to make a note of what a witness deposed about his age on the ground that the witness could have no personal knowledge about it.

My grandfather Ambashankar, after serving as Sherastdar in the Sadar Divan Adalat at Bombay rose to be Principal Sadar Amin at Ahmedabad. In that office, he acquired great reputation as a judge. Some years after I had been admitted as an Advocate on the Original Side, Mr. Bhulabhai Desai after having argued an appeal on the Appellate Side came to me in the High Court Library and said "We had to consider in an appeal a judgment which your grandfather had delivered at Ahmedabad on a point of *res judicata*, and would you believe me, that judgment was a perfect exposition of the law on that subject." My father also took up law and became a Subordinate Judge. On his retirement from that office he became Dewan of the State of Limbdi in Kathiawar.

My first recollections go back to the seventies of the last century when I attended school at Umreth in the Kaira District where my father was Subordinate Judge. Umreth was in those days typical of many small Indian towns whose inhabitants regulated their social economy in a remarkably efficient manner. The population consisted principally of Brahmins, Banias and Kunbis, mostly engaged in agriculture, money-lending and trade in various parts of India. They practised rigid economy and frugal living. When it was found that people were spending too much on marriages, various communities resolved that all marriages should be celebrated within a period of a

few days in the year which was to be fixed by the Punchayet. Thus, every family celebrating a marriage would, according to custom, invite the whole caste to dinner but there being a large number of marriages falling on the same day, the diners would be divided, and each host would have to provide dinner for only a few people, being their close relations, while getting the credit of having invited the whole caste.

When Government wanted to establish a Municipality for the town, the whole town objected. Their plea was that a Municipality would make roads and put up lights in the streets at night, but since they mostly took their meals in the evening early and as far as possible avoided lighting in their own houses for economy, they did not see the utility of lights in the streets. Public opinion against unnecessary expenditure was so strong that Mr. Goculdas Kahandas Parekh, a prominent Pleader in the High Court who was wealthy and whose native place was Umreth, could not permit himself to keep a horse and carriage in Umreth lest thereby he set a bad example of unnecessary expenditure.

Umreth people were against the B.B. & C.I. Railway extending their line to their town from Anand which is twenty miles away and further to Dakore where there is the shrine of Ranchhodraiji to which thousands of pilgrims resort every year. They did not want the peace of their country-side to be disturbed. When ultimately the Railway was extended to Umreth and Dakore, Umrethians continued as before to walk all the six miles to Dakore and would not use the Railway. They were against the establishment of any factories in their town and when some one wanted to put up a ginning factory the masons, carpenters and labourers would not erect the factory. The Umrethians of those days had anticipated the Gandhian philosophy of no machinery, no railways, boycott and non-co-operation. Mr. Gandhi was then in his cradle.

After my father was transferred to Ahmedabad, I studied at the High School there and having passed my Matriculation Examination, joined the Elphinstone College in Bombay at the beginning of 1880. The Elphinstone College was then situated opposite the Victoria Gardens at Parel. There was provision for resident students on the second floor of the College and I became a resident student. Wordsworth, a grandson of the Poet Wordsworth, was the Principal.

While at College, I came into close contact with three persons and this association largely moulded my character and influenced my outlook on life. Foremost among them was Principal Wordsworth. He had a great personality and his active sympathy for Indians and their aspirations evoked general admiration. He was a profound scholar of literature and history, and it was real liberal education to attend his lectures. His open advocacy of the Ilbert Bill and his support to the Indian National Congress movement will be referred to in a later chapter.

After I finished my University education and began practising as a lawyer, I continued contact with this great Professor and friend of India. On the eve of his retirement in 1890 the Honorary Doctorate of Law was conferred upon him by the University of Bombay. On that occasion his past and present pupils escorted him in a torch-light procession from the University Hall to his residence as a mark of their respect and admiration. I was one of those who joined that procession. At the time of his retirement, I presented him with a silver writing set. The letter which, he wrote to me in acknowledgement I have treasured ever since.

Wordsworth died in the year 1918 and I referred to him in my address as Vice-Chancellor at the Convocation of the University of Bombay in the following terms:—

> "Dr. Wordsworth has gone to his last resting place in the historic city of Rome near the spot where

Keats and Shelley rest, but his teaching and example will always inspire the minds of the youth of this land with that robust patriotism which he did so much to create and stimulate, and his attributes and conduct will always evoke genuine admiration for the nobility of the British character which he so eminently typified in himself."

Further, I quoted the following remarkable observation which the late Dr. Wordsworth had made at a meeting of the Senate:

> "The Indian people, by the counsels of Providence have been brought into contact, I would rather say, into partnership with the most restless, progressive and enterprising nation of Europe—a people who have their very being in liberty and free discussion, and whose example is so contagious that it affects all who come within its sphere. Deliberately and without craven fear, we have invited the youths of India to study our history and our literature. We have permeated them with our ideas, and held up ourselves as a worthy example for their imitation. We have done all this, and, can we now imagine that it is possible to retain a people whom we have thus aroused, stimulated and enlightened, in the leading strings appropriate to a time which has for ever passed away?"

The second person who influenced me was the late Dr. Moreshwar Gopal Deshmukh who was then Assistant Chemical Analyser to the Government. His father Gopal Hari Deshmukh who was at one time Small Causes Court Judge at Ahmedabad was a friend of my father. Dr. Deshmukh in order to qualify himself for the M. D. examination, was keeping terms at the Elphinstone College for the B.Sc. degree. I came in contact with him at the College and our acquaintance grew into close friendship which lasted till his death in 1928. Dr. Deshmukh was a man of very simple

habits, of large sympathies, specially for the poor and of deep patriotism.

The third person was the late Prof. T. K. Gajjar. We came together in the residency of the Elphinstone College, soon became close friends and remained so till his death. For many years we shared the same residence in Bombay. Prof. Gajjar was a great scientist specially in the field of Chemistry. In October 1896 the beautiful marble statue of Queen Victoria on the Esplanade was disfigured by some one who threw tar on the face. All attempts to remove the stains failed and it was contemplated to remove the head and substitute a new one. Prof. Gajjar then came forward to clear the stains and he succeeded marvellously in doing so. Prof. Gajjar set a great example of hard work and devotion to science. He discovered a process of bleaching yellow-stained pearls and this process is still used. Above all, he was a man of generous instincts and deep human sympathies. His son Dr. K. T. Gajjar is now a renowned Pathologist in Bombay.

After I took my B. A. degree, my father was desirous that I should enter Government service. What was called the Statutory Indian Civil Service had been at that time created. A certain proportion of the total number selected by examination in London for the Indian Civil Service was recruited in India by nomination. Dr. Wordsworth recommended me for such nomination and we understood that the Government of Bombay sent up the recommendation to the Government of India. The Government of India, however, inaugurated a new policy about these nominations. They decided that instead of direct nomination suitable persons from the provincial civil service should be nominated to the I.C.S. It was then suggested that if I entered the Revenue Department as a graduate recruit under the rules in that behalf, after a short interval Government might appoint me Deputy Collector and then I could be taken into the Statutory Civil Service.

My own inclination was throughout against entering Government service and my strong desire was to take to law and practise in the High Court. I had, however, much against my will, to defer to the wishes of my father. I was appointed Treasury Karkun on a salary of Rs. 30/- a month at Sanand in the Ahmedabad District. I worked as such for four days. Every morning, I went by train to Sanand and returned in the evening. I spent in railway fare alone every day twice the salary I earned. At the end of four days, I decided to resign and go to Bombay for the study of law. Without informing my father about this decision I went straight to the Collector who was a friend of my father and handed him my resignation. He tried to persuade me not to resign but finding me firm about it, he asked me to put in an application for a year's leave without pay and go in for law so that at the end of the year, I could finally decide. I put in the application then and there and the leave was granted. I then told my father what I had done and contrary to my apprehension he was not angry about it. I then came to Bombay and began reading for the LL.B. examination.

My desire to take to the legal profession had been much stimulated by the stories that I had heard from my father as well as from Nanabhai Haridas (afterwards a Judge of the Bombay High Court) and Dhirajlal Mathuradas, Government Pleader in the High Court who used to visit my father. They spoke about the achievements of outstanding lawyers in Bombay and about the great independence and solicitude for the liberty of the subject which the High Court and its predecessor, the Supreme Court, displayed and in this connection particular reference in detail was made to three noteworthy cases.

I had heard of the advocacy of Mr. Anstey in the sensational libel case in which Karsondas Mulji, a great social reformer of those days who exposed the misdeeds of a Gosaiji Maharaj (a high priest of Vaishnavas), was sued



Bai Pankhdi



Harilal

for defamation. Sir Joseph Arnold who heard the case held the allegations to be proved and dismissed the suit. Anstey was at one time a Member of Parliament and had proved a thorn in the side of the Government of Lord Palmerston. They sent him out as Attorney-General in Hongkong where he quarrelled with the Judges and he then came to Bombay to practise. He was considered a great jurist and an effective Advocate and attracted to himself very large practice. Anstey was very hot tempered and had on occasions passages at arms with the judges. It was said that he once insulted a solicitor and thereupon the solicitors as a body decided not to brief him. He then appeared instructed directly by a client and argued for two days that he was entitled to do so. The Court decided against him. Thereupon, he got a friend who was practising as a solicitor in Madras to come and get enrolled in Bombay. The result was that this solicitor attracted the bulk of the work as parties desired Anstey to be briefed and the other solicitors would not brief him. Within a short time the solicitors realised to their cost that it did not pay to quarrel with Anstey and they compromised with him.

As it may interest readers to know what happened in the three cases that had made so deep an impression on me, I am shortly summarising the facts as gathered from authorised reports.

In the first case, Sir Edward West, the Chief Justice of the Supreme Court, and Sir Peter Grant and Chambers, Judges, had issued writs of *habeas corpus* for the production of one Moro Raghunath who was alleged to have been kept in custody in Poona and of Bapu Ganesh who was detained in the Thana Jail. The Governor and Members of Council thereupon sent a letter signed by themselves to the Court requesting that the Court should not take any further action in the matter. On the assembling of the Court, the Judges ordered the Clerk of the Crown to

cution of that witness and to allow Mr. Pritchard to attend to it. For the purposes of the enquiry before the Judge, Mr. Pritchard applied for summonses to call as witnesses Mr. Anstey and Mr. Shantaram Narayan who had appeared as Counsel and Pleader for the accused before the Division Bench of the High Court and the summonses required them to produce their briefs and the instructions given to them by their clients.

Mr. Shantaram Narayan on whom the summons was served in time appeared and objected to disclosing any instructions that he had received from his clients. The summons on Mr. Anstey was served so late that it was impossible for him to appear at Dhulia. As Mr. Anstey did not appear, Mr. Pritchard applied to the Sessions Judge to issue attachment against him but the Sessions Judge had the good sense to refuse. The Sessions Judge in making his report referred to and relied upon certain personal communications, partly verbal and partly in the shape of a private note sent to him by Mr. Pritchard. The Full Bench in their judgment observed:

> "The appointment of Mr. Pritchard as Crown Prosecutor, he having been the Magistrate who tried the case, was the most improper and singular proceeding. To convert the Judge as an Advocate seeking to uphold his own decision before another tribunal is, so far as we know at least in the annals of British Jurisprudence, quite unprecedented, and most objectionable as he has a personal interest in the case, which a Public Prosecutor should not have."

They further said that they were astonished that the Judge should have suggested the appointment of Pritchard as Public Prosecutor and that the District Magistrate should have acted on the Judge's proposal. They went on to observe:—

> "We deeply regret that Mr. Pritchard should have so far forgotten his duty towards the prisoners, the



> public and the Court as to apply to the Sessions Judge (not only before the result of the enquiry was made known to this Court and the case finally disposed of by it on the evidence then and previously taken, but before the enquiry itself had terminated) for permission to prosecute before an inferior tribunal, Govind Narayen, Sri Narayan and one of their witnesses in respect of the evidence given by them, and the truth of which was to be considered by this Court and again we are more surprised and more grieved to find that the Sessions Judge so little knew his duty as to grant that permission."

The Full Bench criticised the conduct of Mr. Pritchard in accusing the pleaders of having come to his camp to tout for clients, a taunt which should not under the circumstances have been uttered by a Magistrate. The High Court also strongly disapproved of the manner in which Pritchard conducted the original trial for a period of six weeks at different places, at long distances, at the hottest season of the year. Then the Full Bench referred to the summonses issued to Anstey and Shantaram Narayan. They said that it was evident that the object of Pritchard in serving the summonses was to get discovery of the instructions given by their clients. Such instructions, they declared, the Counsel, Attorney or Pleader was not at liberty to disclose without the consent of the clients. The Court further observed :

> "It is not desirable that Magistrates whose decisions are under appeal or who have been engaged in prompting the prosecution, and officers of Police concerned in the case at the hearing, should sit beside or near the Judge or should converse with him and we consider the verbal communications and notes which passed between the Magistrate and the Judge in this case highly irregular, and if such a practice be persisted in, as calling for serious notice." (8 *B.H.C.R. Cr.C.* 126.)

The third case was one in which the High Court of Bombay declared *ultra vires* the action of the Government of India in ceding part of British India to an Indian State without the authority of Parliament. After a decree of a British Court in respect of a subject matter in some British Indian villages, those villages were ceded to the Bhavnagar State and a notification was issued to that effect by the Government of India under Section 113 of the Evidence Act which makes such notification conclusive evidence of cession of territory. Execution of the decree was sought and the question arose whether British Indian Courts could execute the decree in territory which had ceased to be British Indian territory by reason of the said notification.

The High Court held that the cession was *ultra vires* as it had not taken place by any Act of Parliament. Government appealed to the Privy Council which held that the jurisdiction of the Courts of the Bombay Presidency over the ceded villages rested upon British Statutes and could not be taken away or altered so as to substitute for it any other jurisdiction except by parliamentary legislation. They further held that the Governor-General-in-Council being precluded by 24 and 25 Victoria, Chapter 67 Section 22 from legislating directly as regards the sovereignty or dominion of the Crown over any part of the territories in India or as to the allegiance of British subjects, could not by any legislative act purporting to make a notification in a Government Gazette conclusive evidence of cession of territory, exclude enquiry as to the nature and lawfulness of that cession. (*I.L.R.* 1 *Bom.* 367). Ultimately a Parliamentary Statute had to be enacted to legalise the cession.

PART 2 THE LAW

2. - - - - - - - THE LAW

EARLY DAYS AT THE BAR

WHEN I was enrolled as a pleader on the Appellate Side of the High Court in February 1887, I did not know any of the pleaders then practising except Vasudeo Jagannath Kirtikar whom my father knew and to whom he had given me a letter of introduction. When I saw Vasudeo Kirtikar he received me very kindly and whenever I sought his advice and guidance, he readily gave them. Vasudeo Kirtikar was the maternal grand-father of M. R. Jayakar.

Soon after I began practice as a pleader I came into contact with Pherozeshah Mehta whose great example of public service, generated in me the desire to serve my country and this affected the whole of my future career. I worked under his leadership in the Congress, the legislature, Municipal Corporation and the University, till his death in 1915. I used almost every evening to meet him. He dominated the public life of the country for over forty years and by his great intellect and selfless work gathered round him a large number of co-workers. Our relations ripened into personal friendship and mutual respect. In the year 1899 on his return from a visit to England, he wrote to me a letter which I felt proud to receive.

When I plunged into the various public activities abovementioned in addition to legal practice, I was warned by several friends that law was a jealous mistress and that if I diverted part of my time and energies to public work, I would suffer in my profession. I however, took the risk. Later on when I exposed in the Legislative Council certain grave abuses in the High Court administration, warnings were given to me that I would thereby incur

the displeasure of the Judges. I again took the risk and followed the path of duty. What those abuses were and how it took many years of hammering in the Bombay Legislative Council to eradicate them, the reader will find in the part 'Legislatures.'

When I joined the Appellate Side Bar, my idea was to qualify as an Advocate with a view to practice on the Original Side. In those days one had to attend the Appellate Side Courts for one year and the Original Side Courts for another year before being allowed to sit for the Advocate's Examination. The examination was considered a stiff one. As in the beginning I had more leisure I was able to keep the terms. After I had completed the keeping of terms, however, I gave up the idea of appearing for the Advocate's examination.

I was led to this decision by two considerations. Firstly, I felt that in order to get on on the Original Side, it was necessary that one should be known to the solicitors in Bombay and I being a mofussil man had not that advantage. On the other hand, having connections in mofussil towns like Ahmedabad, Surat and Broach, it was more easy for me to get appellate work. Secondly, I understood that Indian practitioners on the Original Side did not get much encouragement. In those days most of the leading solicitors' firms were wholly European in their composition and they naturally preferred to brief European barristers. The clients too preferred European barristers to conduct their cases because they somehow believed that a European Barrister would carry more weight than an Indian before European Judges.

There were seven Judges in all and there was among them only one Indian who, invariably sat on the Appellate Side. Moreover, many of the clients of those days not knowing the English language were entirely dependent on managing clerks through whom they contacted the solicitors, and the managing clerks of that generation had marked

preference for European Barristers. There were no doubt some Indian practitioners like Badruddin Tyabji, Pherozeshah Mehta and K. T. Telang who had made good progress but even they were not so much in demand as the European Barristers. In the above circumstances, I was persuaded to give up for the time being the idea of becoming an advocate.

I had however always in my mind the desire to practise on the Original Side and availed myself of the opportunity to fulfil that desire as soon as it presented itself. In the year 1896 the office of the Chief Judge of the Small Causes Court fell vacant and there was a technical difficulty in the way of appointing as Chief Judge, Rustomji Patel who was the second Judge. He was a Pleader and the Act required that the Chief Judge should be a Barrister or Advocate. In order to get over this difficulty the High Court Judges were induced to enact a rule that a pleader of ten years' standing who had ceased practice for one year could, at the discretion of the Judges of the High Court, be admitted as an advocate. Immediately after passing this rule, the High Court admitted Rustomji Patel as an Advocate and he was appointed Chief Judge. The condition of ceasing practice for one year was evidently put in to discourage practising pleaders from applying under the rule while it imposed no impediment in the way of Rustomji Patel because while he was a Judge of the Small Causes Court, he had ceased practising for many years.

Mr. Macpherson, a leading practitioner on the Original Side, whom I was instructing in various appeals on the Appellate Side, suggested to me the desirability of my taking advantage of this rule and of getting enrolled on the Original Side. I accordingly saw Chief Justice Farran and expressed to him my desire to take advantage of the new rule. He said it would be a good thing if I took the contemplated step and he assured me that the Judges would be glad to admit me as an advocate. I accordingly gave

notice to the Registrar of the Appellate Side of my intention to apply under the rule and ceased practice for one year. A little time before the expiry of the year Sir Charles Farran died and Parsons was appointed to act as Chief Justice. I sent in my application and I promptly received a reply from the Prothonotary that the Chief Justice and Judges had been pleased to admit me as Advocate. After myself, two persons, namely H. C. Coyaji and Dinsha Mulla took advantage of this rule and were admitted as Advocates. Subsequently, the rules were relaxed by omitting the condition of ceasing practice for one year and the Judges have admitted several pleaders of ten years' standing as Advocates.

When I began practice on the Original Side, I found that a sneaking preference for European practitioners and want of encouragement to Indian practitioners still lingered. I can never forget how a Judge treated me on one occasion. I was arguing a point before him and he was putting forward his objections to the same in a manner which showed he had not properly grasped my argument. He suddenly said rudely: "Mr. Setalvad, you do not seem to understand English." I was naturally much annoyed by this rudeness. I rejoined "I understand English as well as Your Lordship does but my misfortune is that I have failed to make you understand the point that I am making."

An Indian solicitor who had briefed me in an important case was holding a conference with me. After I had explained to him how I was going to put our case, he said: "If your skin were as fair as your arguments, I would have been sure of success." Racial prejudice and discrimination rapidly wore out with more and more Indians coming into the front rank of practitioners on the Original Side and by the encouragement that Sir Lawrence Jenkins gave to them. When one evening in 1906 Craigie, the Senior partner in Messrs. Craigie, Lynch & Owen, a leading firm of Solicitors walked into my Chamber and delivered to me a

heavy brief in a case that lasted two months before Justice Beaman and marked the fees I mentioned, I realised that the ghost of racial prejudice had been buried once for all at least as far as the legal profession was concerned.

SOME JUDGES

SARGENT & WEST

WHEN I was enrolled as pleader, Sargent was Chief Justice, and he and Nanabhai Haridas, a Pleader, who was the first permanent Indian Judge, sat in the first Appellate Court and Raymond West and Birdwood, both Civilians, sat in the second Appellate Court. The three Original Side Courts were presided over by Bailey and James Scott, Barristers, and John Jardine, a Civilian. Sargent had succeeded Westropp who had made a great name as an able and independent Judge. Sargent was clear headed and his judgments were to the point and couched in simple language. West was a jurist and scholar who had made a deep study of Roman Law and comparative Jurisprudence. He was also learned in Hindu Law and the two volumes on Hindu Law by West and Buhler, Professor of Sanskrit at the Deccan College, Poona, were in those days cited as authority. West was in the habit of using high flown and involved language quite in contrast with the simple language of Sargent.

I remember an incident which illustrates this contrast. A pleader was arguing before Sir Charles Sargent and another Judge a civil revision application and in support of his contention cited a judgment of West about the revisional powers of the High Court. In that judgment occurred the expression "the extrinsic conditions of the Court's legal activity." Sargent scratched his head and repeated this expression twice. Then he laughed as he sometimes used to do and said "I suppose Mr. Justice West means by this expression 'jurisdiction'."

Sir Charles Sargent retired in the year 1895 after sitting on the Bench as a Puisne Judge for 16 years and as

Chief Justice for 13 years. On his retirement, a public meeting of the citizens of Bombay was held at which Pherozeshah Mehta presided and in his speech said: "The Bombay High Court has been singularly fortunate in being able to show a roll of Judges and Chief Justices who have been distinguished for great and unusual culture, capacity and learning. In this illustrious roll, none has more worthily sustained the great traditions of the high and responsible position of Judge and Chief Justice as Sir Charles Sargent had done for the last thirty years." A Committee was appointed to raise a fund for a suitable memorial. After his retirement, I met him in London in 1899. He died in the following year.

Some days after I joined the Appellate Side Bar, I was struck by the beautiful head of hair that West had. I noticed that he came into the court room invariably with a top hat on his head and walked so covered up to the steps of the dais, and then handed over the hat to his *chopdar* before ascending the steps of the dais. I could not understand why he did that. Being curious I enquired from some of my seniors and they told me that West was bald, that the head of hair was merely a wig he was wearing, and that once while he was entering the court room, a gust of wind blew off the wig and that ever since he always came with his hat on and took it off just near the dais.

JUSTICE BIRDWOOD

Birdwood was another member of the Bench who had distinguished himself as a very independent and able judge. Birdwood knew and spoke the Gujerati language very well. Once he was on a holiday at Matheran. He used to walk with a little swing. One day while he was walking on the hill some Parsi youths whom he passed on the way said amongst themselves in Gujerati. "Here is a drunken man walking along." Birdwood turned back and spoke to

them in Gujerati મનસની ગવસની કુનસની (which is the Parsi formula for oath) મેં ખરેખર દારૂ પીધો નથી ("I tell you truly. I am not drunk.") The Parsi lads were taken aback and beat a hasty retreat. Lord Birdwood the former Commander-in-Chief of India is Justice Birdwood's son. Whenever he met me he wanted me to talk to him about his father and his work as High Court Judge and Member of Council. When Birdwood was member of Council, I was in the Bombay Legislative Council and we worked together on various Select Committees. After his retirement, we used to correspond.

JUSTICE PARSONS

When Birdwood was appointed a member of the Executive Council of the Governor of Bombay, Parsons succeeded him in the High Court. Although in the beginning, he was impatient and hasty, he improved almost every day and proved to be a very efficient judge. I remember two incidents which must have had a sobering influence on him. Shantaram was arguing an appeal and Parsons said "Your argument comes to this, that it is so because it must be so and it must be so because it is so." Shantaram retorted "We are not accustomed to be spoken to in this manner. You will have to drop this manner of talking to pleaders."

On another occasion, while a pleader was arguing a particular point before Jardine and Parsons the latter impatiently said that there was nothing in the point and asked him to go to the next point. Jardine intervened and said "Please complete your argument. I do not make up my mind without fully hearing pleaders."

Parsons was averse to many authorities being cited and would apply his mind to the words of an enactment and come to a conclusion. Once on the Original Side, Latham, the Advocate-General, had before him on the table a long array of authorities. Parsons said "Why do you want all these authorities for a point which is simple

enough to my mind?" Latham rejoined "I know your Lordship has contempt for authorities but it is necessary for my purpose to cite them."

Once he heard a long case about a Mill Company which took 40 hearings. Macpherson who was for the plaintiff took over two days to give his final reply. At the end of his reply, Parsons at once began to read his judgment which he had brought ready with him. Macpherson said "If your Lordship had already come to a decision and written out your judgment, you could well have spared me the trouble of talking for over two days."

Parsons made one of the best Judges in his time. When Farren died suddenly, Parsons acted as Chief Justice. He was so much appreciated by the practitioners and the public that memorials were sent by some public bodies praying that Parsons should be made permanent Chief Justice although he was a Civilian.

JUSTICE NANABHAI HARIDAS

Nanabhai Haridas before he was appointed Judge had occupied the position of Government Pleader and had large practice. Some years before I joined the Appellate Side Bar, Nanabhai and William Wedderburn who was acting as a Judge perturbed the Anglo-Indian community by their action regarding certain criminal cases that arose out of the negligence of the drivers and guards of the Southern Maratha Railway who were mostly Anglo-Indians. Some serious accidents had occurred involving severe injuries to human beings and cattle. The trying Magistrate convicted the accused but imposed only sentences of small fines. Nanabhai Haridas and Wedderburn sent for the records and proceedings of these cases and after giving notice to the accused and hearing them, enhanced the sentences to various terms of imprisonments.

On another occasion, Nanabhai and Birdwood passed strong strictures on the conduct of an European Assistant

Collector. An Indian Forest Officer happened to meet the Assistant Collector in the bazaar. The Assistant Collector finding that the Indian did not salaam him, stopped him and kicked him. The Forest Officer prosecuted the Assistant Collector and the Collector who tried him discharged him with a warning. Nanabhai on a review of the criminal returns from that District called for the records and proceedings and issued a notice to the accused to show cause why he should not be sentenced. I was present in Court when judgment was given. The Judges criticised severely the behaviour of the European Officer and said that such conduct was bringing disgrace on British administration and fined the accused Rs. 100.

JUSTICE JARDINE

Jardine was a deep student of English history, constitution and literature, both European and Orient. He had great concern for liberty of speech and of the press. Two cases in which these qualities were abundantly displayed may be referred to here.

On August 11, 1893, grave Hindu-Muslim riots broke out in Bombay, and for several days there was great bloodshed and destruction of property in the city. Communication between Bombay and Poona was dislocated for several days. The police and military were for a time unable to cope with the fury of the Muslim crowds. The Hindu population, and more especially the Gujaratis, were terrified and large numbers of people left the city. The Kamatis and Ghatis, more especially the mill-hands among them, came out and with great valour assisted the police and military in quelling the riots.

After the riots had subsided, one Kanji wrote and published a poem in Gujarati giving a narrative of the causes and progress of the riots. In the course of this narrative, the author incidentally extolled the Ghatis and Kamatis for their brave resistence and for the aid they

rendered to the authorities in putting down the disturbances. In one of the stanzas, after praising the Kamatis and Ghatis, he said "Fight again for the country's good, Brave, Brave are the Kamati people." Kanji was prosecuted in the Court of the Chief Presidency Magistrate under Sections 153 and 117 of the Indian Penal Code on the ground that some portions of his production were direct instigation to the Kamatis and Ghatis to riot. The Magistrate convicted the accused and sentenced him to three months' imprisonment and a fine of Rs. 201.

On appeal, the High Court set aside the conviction and sentence, holding that the poem when read as a whole was not an incitement to riot but was really in praise of all those who had exerted themselves in putting down the riots. In his judgment, Justice Jardine observed: "We have to consider the whole poem giving its weight to every part." He further said: "The Court cannot safely deal with a product like this without remembering the rhetorical forms used by the writer. Poetry often has more meaning than prose. Read how Addision's *Plato* was applauded by both Whig and Tory. The translations remind one of those of Dryden in Alexander's Feast and of Schiller in the *Song of the Bell*, of some of the psalms. The attempt is to move by pity and terror; and the prosecution urge that the line beginning 'Fight again' and what follows are calculated to move to rage and violence, to incite the Ghatis and Kamatis to fire another Troy. Not every poet is as cautious as Addision, of whom Johnson says "When Pope brought in the Prologue (to the tragedy of Cato) which is properly accommodated to the play there were these words 'Britons, arise! By worth like this approve' meanig nothing more than Britons, exert and exalt yourself to the appreciation of public virtue. Addision was frightened lest he should be thought a promoter of insurrection and the line was altered to "Britons attend!" It may be conceded that the words 'fight again' are incautious. But then we find the poem from beginning to end consists of lamentations over the

riots. The actual words 'fight again' are qualified by the words 'for your country's good.' Judged by the context and the whole spirit of the poem as well as ordinary meaning, the qualifying words do not necessarily imply wanton outbreak and fighting. The latter song about contempt of death expresses sentiments adopted by many poets and religious moralisers in all ages and countries. They are found in the *Bhagvat Gita* and the Shakespearian remark that 'brave men die but once and cowards often'."

With regard to the evidence of some witnesses that some Mahomedans to whom the lines were read by the witnesses complained of them, Mr. Justice Jardine said :—

> "But this fact is hardly relevant to the question whether the accused in publishing the poem did what was illegal. Many sermons and comments on the acts or opinions of others, eulogies or elegies to prominent leaders or the mighty dead may be delivered in a legal and peaceable way, and yet, especially in factious times raise much ill feeling in the ranks of the opposite party. Yet, this is not generally a reason for interference with the liberty of speech or of the press; such interference with legal rights would only cause oppression and give increased power to faction. People may be angry; but if they allow themselves by anger to commit assault, they expose themselves to criminal punishment. This is the answer of the law to people like the Mussalman witnesses who sat down to hear the poem read and then thought they did well to be angry. Milton shall not be silenced because Salmasius seeks to break his head. The peaceful lists of literature had long been opened to Whig and Tory, Catholic and Protestant, Platonist and Materialist, Round Head and Cavalier, Hindu and Mussalman." (*I.L.R.* (18), *Bombay*, Page 758).

To compare an ordinary versifier Kanji to Milton may betray lack of proportion but the whole judgment reveals

the high standard of justice that fired Mr. Justice Jardine and displays his great learning and industry.

CRAWFORD PROSECUTION

For a considerable time, there were reports current that Mr. A. T. Crawford, Revenue Commissioner of the Central Division, was taking illegal gratification for appointing persons as Mamlatdars and Deputy Collectors and it was said that one Hanmantrao Jagirdar was the intermediary in these doings. Sometime in the year 1888, the said Hanmantrao was prosecuted before Mr. Vidal, District Magistrate of Poona. During the course of that trial certain Mamlatdars and Deputy Collectors gave evidence in which they deposed that they had given moneys to Hanmantrao as gratification for procuring their advancement at the hands of Crawford. Hanmantrao was convicted and his appeal was dismissed by the then Sessions Judge Candy. In his judgment, Candy held that these officers had confessed to having given bribes and were guilty of abetment. Candy sent a copy of his judgment to the District Magistrate and it was on the latter's file. Soon after this, a commission was appointed by Government to inquire into the charges of bribery against Mr. Crawford.

Pending the enquiry before the Special Commission, one Ganesh Narayen Sathe lodged a complaint in the Court of the same District Magistrate of Poona charging Balkrishna Govind Shindekar and five other Mamlatdars, who had given evidence at the trial of Hanmantrao, for having given bribes and thereby abetted the offence committed by Hanmantrao. The District Magistrate dismissed the complaint on the grounds, firstly that the complaint was expected to be heard in the cases under enquiry by the Crawford Commission in which cases the persons complained against were presumably to be examined as witnesses; and secondly that it was presented by a person who had no ostensible motive for arrogating to himself the functions of a

public prosecutor beyond a declaration, contained in the complaint, that he was a "friend of equity and even-handed justice." The District Magistrate further stated that it was not a *bona fide* complaint and that the object of the complaint was to intimidate witnesses on whom the prosecution presumably relied in the proceedings before the Crawford Commission.

The complainant applied in revision to the High Court and, in October 1888, the Vacation Bench consisting of Mr. Justice Birdwood and Mr. Justice Jardine called for the record and proceedings. While doing so, the Judges brought to the notice of Government the statements made by the Mamlatdars during the trial of Hanmantrao and said that Government should inquire into the conduct of the Magistrates who had admitted that they had paid money for getting their offices. When the record and proceedings came, a full bench consisting of Chief Justice Sargent, Justices Bailey, Scott and Nanabhai heard the matter on January 18, 1889. They held that the Magistrate had wrongly dismissed the complaint on extra-judicial considerations and that he must proceed to deal with the complaint according to law.

When the case was taken up by Mr. East, who had succeeded Mr. Vidal as District Magistrate, the complainant asked leave to withdraw the complaint as he had no personal knowledge of the facts alleged in his complaint. The Magistrate examined him at great length as to the motives which had induced him to file the complaint and asked him to disclose the names of the persons at whose instigation he was acting. The complainant refused to answer these questions. The Magistrate ordered him to be imprisoned for seven days and dismissed the complaint.

A Division Bench of the High Court consisting of Justices Scott and Jardine sent for the record of the case and called for a report from the Magistrate. The Magistrate who had thus disregarded the previous orders of the High Court had the audacity to say in his report that the

complainant "had the impudence to trouble their Lordships." The Court passed severe strictures on the manner in which the Magistrate had dealt with the case and held that his action in dismissing the complaint and awarding imprisonment to the complainant for not having answered questions which the Magistrate had no right to put to him was not justified. The judgment delivered by Justice Jardine in this case is a standing monument to his industry, deep study of Constitutional law and English and Indian case law. He laid great stress on the purity of judicial administration and traced how that was secured and safeguarded from the date of the Magna Charta to the present time by various judicial pronouncements of the British Courts. He referred to the impeachment of the Earl of Macclesfield, Lord Chancellor in 1725, for the sale of Judicial offices for which he was convicted by the House of Lords. While granting that the complainant's motive might be very questionable and that he might be acting as a tool of other people, Justice Jardine held that where public policy was in question, the Courts had to hearken as stated by Lord Mansfield in one of his decisions, even to an accomplice in crime tainted with criminal contamination in order to ensure the proper investigation of crime alleged to have been committed as is often done in cases of false coinage, bribery and secret conspiracies.

In another passage Justice Jardine said:—

> "If the persons complained of were not Magistrates and Civil Judges exercising enormous powers, I would have less difficulty in coming to a judgment. But, as the Lords of the Privy Council say, it is specially in India that purity in the administration of justice must be secured."

He further quoted the Privy Council who had said:—

> "It is palpably prejudicial to the good of the public to have places of the highest concernment, on the due

execution whereof the happiness of both King and people depend, disposed of, not to those who are most able to execute them, but to those who are most able to pay for them; neither can there be any greater temptation to officers to abuse their power by bribery and extortion and other acts of injustice, than the consideration of having been at great expense in gaining their places, and the necessity of sometimes straining a point to make their bargain answer their expectations."

Justice Jardine had great hesitation in determining what orders the Court should pass in the matter. In a passage of his judgment he said:—

"Lastly, we have now to determine what order we should pass in the case before us. What Mr. East inquired into is not the nature of the complaint; what he has elicited by stress of imprisonment, is irrelevant information as to the advice on which the complainant acted, the names of his advisers and the motives for complaining. Thus the persons accused have, by the mistakes of two Magistrates, escaped the preliminary investigation which might or might not have led to their arraignment, and public justice has not been vindicated, the accused were not summoned and the complainant was sent to prison. Now as a matter of strict law, we ought perhaps to enforce obedience to the judgment of the Full Bench and after hearing the accused, determine whether we should order the Magistrate to enquire into the truth of the complaint and let the motives of the complainant and his advisers alone."

Having regard however to the fact that the conduct of these Magistrates and Mamlatdars was a subject of discussion in the House of Commons and that directions about them had been issued by His Majesty's Secretary of State

and enquiries were being held by the Government of Bombay, the Court ultimately came to the conclusion that no further action need be taken and the papers were returned to the Lower Court. Ultimately an Act of Indemnity was passed by the Central Legislature whereby these officers were saved from prosecution but, as insisted upon by the High Court, all these corrupt officers were removed from their offices. (*I.L.R.* 13 *Bom.* p. 590.)

This case affords an illustration of the evil of the combination of executive and judicial functions. If the two District Magistrates who dealt with the case had not been Collectors and Revenue Officers under the Executive Government but purely judicial officers under the High Court, they would not have ventured to adopt the highly unjudicial attitude they did.

Crawford in his Reminiscences which he published in 1908 said:

> "Men in high position in the Civil Service, most of whom were my assistants, and owed their promotions directly to me, men who with their wives and daughters, almost daily partook of my lavish hospitality and were proud to be invited to Moola Lodge on Sunday evening parties, actually obtained access to my private apartments, read my letters, drew sketches of the interior of my bungalow and removed papers that would have been of enormous service to me in my defence. May God Almighty curse them one and all."

Government never forgave Jardine for what they conceived to be the obstruction that the High Court caused them in the matter. When Birdwood retired from the membership of the Executive Council in the year 1897 Government, departing from the usual practice of taking one member from the judicial branch and one from the executive branch of the service, did not appoint Jardine to succeed Birdwood but instead appointed Ollivant from the

executive branch. The appointment of Ollivant appeared in the papers on a Wednesday and Jardine sent in his papers for retirement and sailed on Saturday. I well remember this because during those few days I was out of Bombay on professional work, and on my return I found a letter from Jardine awaiting me telling me what had happened and regretting that he was unable to meet me before he sailed as I was out of Bombay. After retirement Jardine entered Parliament.

We used to correspond with each other. When I was elected to the Imperial Legislative Council, I received the following letter from him.

London, 18th April 1915

Dear Chimanlal,

"I read in the papers that you have been elected to succeed Mr. Gokhale as member of the Governor-General's Council. This is significant, especially at such a time, of the respect in which both your character and abilities are held and I write to congratulate you and your family on this very honourable, important and useful position. May you enjoy it for many years."

* * * * *

After referring to his sons who were fighting on the front, he proceeded to say.

"For us it is a time of anxiety. I keep before the public the splendid conduct of the Indian Princes, peoples and soldiers and I mean to solace my own anxiety with the *Bhagvat Gita*, especially the instructions to Arjuna."

Yours Sincerely,
John Jardine.

In the year 1917, he was created a Baronet. On my sending him congratulations on the event, he wrote to me as follows:

London, 5th June 1917

Dear Chimanlal,

I am obliged by yours of April 25 and glad to receive your kind remarks on my being created a Baronet and on my career in India. It interests me much to learn that as soon as you relinquished the office of member of the Imperial Legislative Council, you were appointed Vice-Chancellor of the Bombay University, a high and important office. I was not long enough in it to do anything. I would have liked to have mooted the question whether we would get endowments to establish two Chairs—First, one of comparative languages—seeing that almost all Europe and Asia meet in Bombay—Sanskrit and all its descendants—strange dialects like Waders, Waghrees, and the queer people of the Konkan hills—Konkani also where Latin words mix with Marathi, Arabic also. Second, one of comparative Religions. They have one at Leyden in Holland. In Bombay, there are all religions and most divisions of each to be studied as well as all the records of the past, Brahman, Buddhist, Muslim, Christian—all the changes they undergo among particular castes and conditions and centuries. Take such horrible facts as the burning of 18 widows at Edar in 1836 and the burning of heretics by the Christian Government in Goa not so long ago. What additions to folk-lore and history would come from such 2 Chairs for research? The one set would also help the other. I hope you will have a highly successful tenure.

What you say about military matters and Indian policy I will think over and mean to discuss your letter with Mr. Chamberlain.

Yours Sincerely,
John Jardine.

JUSTICE TELANG

Nanabhai Haridas died in the year 1889. Vishvanath Narayen Mandlik had died a few months before. It was generally expected at the time that Shantaram Narayen, who had succeeded Mandalik as Government Pleader, would be appointed to succeed Nanabhai. Telang was also a hot favourite but the difficulty in the way of his appointment was that he was neither a Barrister nor a pleader but an Advocate, and under the Act, the qualification for a person to be appointed as High Court Judge was that he must be either a Barrister of five years' standing or a pleader of 10 years' standing. Ultimately the difficulty was got over by holding that Telang could be considered a pleader of 10 years' standing because the definition of a pleader in the Civil Procedure Code included an Advocate.

Telang was only 39 at the time and was the youngest Judge ever appointed to the High Court Bench. His appointment met with general approval and he fulfilled all expectations. Telang had a big reputation as a scholar and had great mastery of the English and Sanskrit languages. He was an eloquent public speaker and was taking an active part in politics. He was one of the Secretaries of the Bombay Presidency Association and at the time of his appointment as Judge was Chairman of the Reception Committee for the Congress Session which was to be held in December of the same year.

Strangely enough on an important question of Hindu Law that came before a Full Bench consisting of Sargent, Bailey, Telang and Candy and which turned on the correct reading and interpretation of the texts of Yagnavalkya and Mitakshar in Sanskrit, the three European Judges who could not read or understand the original texts but had to depend on translations overruled the view of Telang who had studied the texts in the original Sanskrit and was in a better position to understand the whole scheme of the texts. The question was whether a son who acquired by birth

interest in the property belonging to a joint family consisting of himself, his father and uncles could enforce partition and get his share if the father did not agree to a partition. It was common ground that if the family consisted only of the father and the son, the son could enforce partition of the family property against the will of the father, but it was held by the Judges other than Telang that if the family consisted of the son, his father and uncles, the son could not enforce partition unless the father consented. Telang's judgment goes into the original texts and it held that the son could enforce partition. In one place in his masterful survey of the Hindu Law on the point, he emphasised that the method indicated by him was the only correct method of interpretation of the texts "unless indeed we are prepared to hold that the Hindu Law is a mere farrago of arbitrary rules and not a coherent system based on logical grounds." The other High Courts have not recognised any such limitation on the right of a coparcener to ask for partition as the full bench held. Telang's health broke down in 1892 and he died in July 1893. A public meeting of the citizens of Bombay convened by the Sheriff was held in the Town Hall under the presidentship of Lord Harris, the Governor of Bombay, to mourn his loss.

JUSTICE CANDY

Candy made a good and industrious judge. But he was easily irritable and sometimes shouted at practitioners appearing before him. He knew the Indian languages of this Presidency, particularly Gujarati and Marathi, fairly well but not to the degree he imagined he did. When he was District Judge in Thana, a pleader was arguing before him on the construction of certain Marathi words in a document. The pleader maintained a particular construction, while Candy was of opinion that it meant something else. There was a heated discussion between the two and the Court adjourned for lunch. Candy's father, Major Candy, was reputed to be a Marathi scholar and had published a

Marathi-English dictionary. The pleader during the recess hour went to the Library and consulted Major Candy's Dictionary and found that his own interpretation was correct. When the Court re-assembled after recess, the pleader said something like this: "Your Honour, during the recess hour, I have consulted Major Candy's Dictionary and he supports my interpretation. However, it is possible that your father may be wrong and you are right."

Another similar incident occurred when Candy was sitting on the Original Side of the High Court. A witness was under examination and he deposed: "વાદીએ મને કહ્યું કે કાલે મારા ઘર આગળ આવજો" The interpreter translated it as follows: "The Plaintiff told me to come to his house next day." Candy shouted at the interpreter and said he was interpreting wrongly. He said, "the witness says that the plaintiff asked him to come near his house". The interpreter had the courage to tell His Lordship "I have interpreted the witness' answer quite correctly but if Your Lordship thinks it means something else, you may take down what you like." At this stage, Counsel intervened and explained to His Lordship that what the interpreter had said was correct and he then accepted the interpretation.

On another occasion, Candy was sitting on the Appellate Side with another Judge, and Narayen Chandavarkar was arguing before him and the question was about the interpretation of a Marathi expression in a document. Chandavarkar was submitting a particular construction and Candy violently asserted that it meant something else. Chandavarkar made a very fine retort. He said: "I do not presume to speak about the meaning of a phrase in a language which is not my mother tongue as confidently as Your Lordship appears to do." Chandavarkar's mother tongue was Konkani and not Marathi.

I myself had an unpleasant incident with Candy. What occurred at the time was recorded by me immediately afterwards as follows:

> At 2-30 p.m. to-day, I went to the Chamber of the Hon'ble Mr. Justice Candy to take a rule in an application for the removal of a guardian of one of the parties to a Review Application pending before His Lordship. I was accompanied by Messrs. Shah and Jhaveri,, the pleaders who were instructing me, and the Sheristedar and Mr. Gokuldas Parekh who represented another party to the Review Application came in shortly after. While I was beginning to explain the nature of my application, Mr. Justice Candy asked me to sit down. I sat down and began arguing in support of my application. Mr. Justice Candy however remained standing but I expected he would sit down in a little while. After a minute or two Mr. Justice Candy asked me to stand up and the following conversation ensued.
>
> Mr. Justice Candy: You must stand up and address while I am standing.
>
> Mr. Setalvad: I thought Your Lordship was about to sit down.
>
> Mr. Justice Candy: You must stand up and address even if the Court is sitting. You must show proper respect to the Court.
>
> Mr. Setalvad: Your Lordship forgets that in Chamber, Counsel at any rate on the Original Side address the Court sitting. Moreover, in this instance, Your Lordship asked me to sit down. I have every desire to show proper respect to the Court but I submit the Court ought also to treat Counsel with due consideration.
>
> (By this time Mr. Justice Candy had sat down).

Mr. Justice Candy: I do not think Counsel address sitting in Chamber. That was not so in my Court. I asked you to sit because I thought you had come to see me on some University matter.

Mr. Setalvad: I am afraid Your Lordship's impression of the practice on the Original Side is not correct. Your Lordship must have known when I came in my gown and accompanied by pleaders that I had come for Court business and I said as much when you asked me to sit down.

Mr. Justice Candy: Go on. I do not care to fight about this matter.

8-8-1899. Chimanlal Setalvad.

Messrs. Shah, Gokuldas and Jhaveri recorded their corroboration of this statement.

I then saw Mr. Macpherson and showed him the statement and told him what had occurred. I further told him that I was going to Sir Lawrence Jenkins, the Chief Justice, to complain about the rude behaviour of the Judge. Macpherson said, "Don't take Candy seriously. Nobody has ever accused him of good manners." I told Macpherson I was not going to let the matter stand there. He then told me not to do anything for a day or two. Evidently Macpherson must have spoken to Candy because the next day, Candy's *chopdar* came to me in the Library and said that the *Saheb* wanted to see me in his Chamber. I told the *chopdar* to inform the Saheb to write to me and tell me what he wanted to see me about. After a short while, the *chopdar* returned with a note from Candy to me saying "Please come. I want to talk to you about what happened yesterday." I then went and Candy apologised for what had happened. The incident thus closed. It must be said about Candy that though he was short-tempered and excitable he never bore malice. In this particular instance, although we had this row at the beginning, he heard my application quietly and made the order I wanted.

JUSTICE RANADE

Speculation was rife as to who would succeed Telang as Judge. The names of Badruddin Tyabji, Pherozeshah Mehta and Wasudev Kirtikar were mentioned. Ultimately the choice fell on Mahadev Govind Ranade. Ranade as expected made a good Judge but he will always be better remembered for the indelible impress he left on his countrymen as a political, social and religious reformer and as one of the outstanding makers of modern India.

Having passed the Advocate's examination in the year 1871, he was appointed First Class Sub-Judge at Poona. There he found a great opportunity to awaken political consciousness in Maharashtra, and his was the master-mind behind the activities of the Poona Sarvajanik Sabha. His connection with political movements was not liked by the authorities. Chief Justice Westropp once wrote to him: "Your writings come in the way of your promotion. If you want promotion, spare these great efforts." Ranade's reply was very characteristic. "I am thankful to you, sir. So far as my wants are concerned, they are few and I can live on very little. Concerning my country's welfare what seems to me true, I must speak out."

In 1879 what was called "Phadke's Rebellion" took place and the Budhwar Palace and the Vishrambag Palace at Poona were set on fire. Ranade very unjustly came under a cloud of suspicion in the minds of the authorities and his letters and correspondence were censored. This showed the utter ineptitude of the bureaucratic mind in judging Indians correctly. In later days too, when Ranade was a Judge of the High Court, during the Tilak trial in 1897, detectives were hovering round Ranade's residence. I know of similar treatment in the case of Pherozeshah Mehta and Gokhale. Ranade was one of the founders of the Indian National Congress. He was, in the words of Sir Homi Mody, one of the "seventy-two good men and true, the foremost among the India's intellectuals who on the fateful

morning of December 27, 1885 sat together to carve out the future of their country." After he came to Bombay, Ranade, took an active part in the working of the University and was mainly responsible for the introduction of vernaculars in the University curricula. As a public speaker he had not the forcefulness of Pherozeshah or Surendranath Banerji but he had a deep clear voice and could always hold an audience. Sir Stanley Reed once said about him: "Without a note, without a pause, he poured forth his stream of learning and sound sense, holding his audience enthralled though he had none of the art of the orator. He made it easy to understand the unseen influence he exercised on the best minds with which he was brought into contact." Principal Selby of the Deccan College used to call him "Our Socrates."

JUSTICE TYABJI

After the retirement of Sargent, Farren who was then a Puisne Judge was appointed Chief Justice superseding Bailey who was the most senior Puisne Judge. Bailey retired and two vacancies occurred.

A. Strachy of the Allahabad Bar and Badruddin Tyabji were appointed. This was the first time that a second Indian Judge was appointed. The two appointments were simultaneously gazetted but it was understood that in the Letters Patent that were issued Strachy was designated as the senior among the two. It fell to Strachy's lot to try Tilak in the year 1897 to which reference will be made hereafter.

Badruddin Tyabji had taken an active part in Indian politics and was the President of the 3rd Session of the Indian National Congress held in Madras in 1887. He was a successful practitioner at the bar and his appointment was received with general satisfaction. He was appointed a judge on his own recognised merits as a lawyer and not because he was a Mohamedan. The pernicious theory of

having communal representation in the judiciary which in recent years has been adopted was never thought of in those days.

Tyabji had a clear grasp of principles and was able to appraise evidence at its true value. He was very independent and fearless. I well remember the judgment which he delivered in the suit for defamation that was filed against Kabraji, Editor of *Rast Goftar*, by Chambers who was the Editor of the weekly *Champion*. Chambers was a well known architect in those days. He was a radical in English politics and took an active part in the Indian National Congress movement. In Kabraji's paper an attack was made incidentally on the Indian National Congress which Tyabji held to be unfounded. In his judgment he said that he considered it a high honour that he had been once chosen as President of the Congress.

It was Badruddin Tyabji who made the order for giving bail to Tilak when he was prosecuted in the year 1897. On one occasion, some question of practice arose in a case before him and Raikes who was arguing said that Chief Justice Jenkins had in another case said that the practice was as he was submitting. Tyabji playing with his beard as he often used to do said: "Mr. Raikes, you can tell the Chief Justice with my compliments that I have been longer in this court than he has been and that the Chief Justice's view on the particular question of practice was quite wrong."

On another occasion when an European Barrister conducting a case before him was mispronouncing an Indian name, he said "If you want to practice in the courts in India you must learn to pronounce Indian names properly." This reminds me of what occurred between Justice Candy and Inverarity. Inverarity during the course of his arguments was continuously mispronouncing a particular Indian name. Candy corrected him and told him how to pronounce it correctly. Inverarity who was always tena-

cious began to address the Court like this "Gordandos" as I pronounce it and Gordhandas as Your Lordship pronounces it" and went on like this whenever he had to refer to that person. Candy soon got tired and told Inverarity in sheer despair: "Pronounce the name as you like, but don't have the double version of the name repeated every time."

CHIEF JUSTICE JENKINS

Farran died in the year 1898 and Sir Louis Kershaw K.C. who had come out as Chief Justice of the Allahabad High Court a short while before was appointed to succeed him. He had a bad heart and he died about three months after his assumption of office.

On the death of Kershaw, Lawrence Jenkins who was Puisne Judge at Calcutta was appointed Chief Justice of Bombay at the age of 41. Lord Curzon in one of his despatches spoke of him as follows:

> "We have here in Calcutta a Judge of the High Court named Jenkins who in less than three years has made a considerable reputation both for capacity on the Bench and for general energy and popularity."

With the appointment of Jenkins, a new era commenced in the history of the Bombay High Court. He proved himself a very capable and efficient Judge. While he gave a full and satisfactory hearing to Counsel, he always effectively controlled the proceedings in his Court so that no time was lost on irrelevant matters. Counsel appearing before him had always to be thoroughly prepared on both law and facts. It can truly be said that Jenkins made the Indian Bar on the Original Side. He took every opportunity to encourage Indian juniors by complimenting them whenever they had acquitted themselves well in the conduct of cases.

While I was arguing an appeal before Jenkins, in discussing a particular point, I said "I think My Lord etc., etc."

Jenkins turned to me and said "Counsel don't think, they submit." I rejoined by saying "Surely before Counsel submits he has to think!" He smiled and took it good humouredly.

This reminds me of an earlier similar incident but in which the positions were reversed. Telang was arguing before Sir Charles Sargent and another Judge an important Hindu Law case involving the interpretation of Sanskrit texts. Telang was a recognised Sankrit scholar and well-versed in Hindu Law. The point was a difficult one and Sargent turned to Telang and said "Mr. Telang, what do you think yourself is the right interpretation?" Telang answered: "Counsel submits to the Court what his client's contention is and is not expected to give his own opinion. It is your high duty to form and express your opinion."

In 1907 Jenkins retired from the Chief Justiceship of Bombay and became a member of the Council of the Secretary of State for India. Later Lord Minto wanted Lord Morley to send Jenkins back to Calcutta as Chief Justice. Lord Morley wrote to Minto as follows:

> "I really don't think I can spare Jenkins. He is one of the two or three most valuable men on my Council. He has been of immense value to me about reforms and a more willing, ready and resourceful man in the legal and legislative line it has never been my fortune to meet. Besides that, he has made a grand sacrifice of personal ease and domestic comfort in consenting to exchange the snug life here for a return to Calcutta and only because he was told that you desired it and that I thought it would be for the public good."

Jenkins when he was in Bombay on more than one occasion advised me to qualify as a Barrister with a view to enlarge my qualifications for being appointed as a Judge of the High Court. In those days there were only seven

Judges in the High Court and owing to the statutory restriction that one-third of them must be civilians and another one-third must be Barristers, there was only one appointment left for which Advocates and pleaders could be chosen. From Whitehall, he again reminded me of this in a letter dated May 1, 1908, as follows:

> "I hope before long to see you here; I feel sure you would be wise to get called to the Bar not because it would enhance your professional position or value but as extending your qualifications. If there is anything I can do towards assisting you to get called I will gladly do it."

SIR BASIL SCOTT

Basil Scott, who was Advocate-General succeeded Jenkins. Scott cannot be deemed very successful as Chief Justice if he is to be judged by the large percentage of reversals of his judgments by the Privy Council.

Scott was a person of strong likes and dislikes. Occasionally he was unnecessarily offensive. Once in the course of my argument before him he made an observation. I said "I quite agree." He said "I don't care whether you agree or not" I promptly replied "Your Lordship need not care but all the same I do agree." A little later he made some other observation and I purposely repeated "I agree." He kept entirely quiet.

JUSTICE RUSSELL

Russell was appointed a Judge of the High Court in the year 1900. The appointment was a surprise because he was not regarded as one likely to be considered for the post. It was that the appointment came about at the instance of the then Attorney-General in England in whose chambers in early days, Russell had been reading. Russell was a nice gentleman but did not prove a satisfactory Judge. Apparently he laboured from such

want of confidence in himself that he easily allowed himself to be led by senior Counsel. Mr. Inverarity and next to him Lowndes carried the greatest weight in his court. I once suffered heavily when I was opposed by Lowndes. In an Air and Light Case, parties had taken a consent decree by which the defendant had undertaken to make various changes in certain of his windows and apertures. The real position with regard to a particular window had been misconceived by the parties while taking the consent decree, and it was physically impossible to carry out the direction in the decree about that particular window. The plaintiff took out a notice for contempt of Court against the defendant for not having carried out that part of the decree.

Dinsha Davar and myself were briefed for the defendant to show cause. As Davar was otherwise engaged I had to go in. I put before the Court plans showing the actual position and pleaded that the particular direction in the decree had gone in by a common mistake and that it was impossible to carry it out. Mr. Lowndes who appeared against me insisted that my client had committed contempt in not carrying out the directions of the decree and Russell accepted that and ordered a warrant of commitment to be issued against my client but it was to lie in the Prothonotary's Office for a fortnight and if my client did not fulfil that particular part of the decree within that time, the warrant was to be executed. This happened during the morning sitting. In the recess hours we hurriedly drew up a Memo of Appeal and at three O'clock, I appeared before Sir Lawrence Jenkins and another Judge in the Appeal Court and presented the appeal and asked that it be heard very early.

Sir Lawrence Jenkins accepted the appeal and fixed the hearing of the appeal after two days dispensing with the printing of the Appeal paper-book and allowing typed copies of the proceedings to be made available to the Court

and the respondent. When the appeal was called on, on the appointed day, I stated the facts and put before the Court the plan showing the physical impossibility of carrying out the directions of the decree in that particular. Jenkins asked me whether I had made this clear to the learned Judge. I said that I had told the learned Judge exactly what I had stated to the Appeal Court but Mr. Lowndes argued that what I had said was no excuse for disobeying the decree and the learned Judge accepted Mr. Lowndes' contention. Jenkins immediately turned to Lowndes and asked him how the order of the learned Judge could be supported. Lowndes tried to support it but the Court was against him. The Court set aside the order of Justice Russell and said that on the facts, it was a clear case for rectification of the decree, and turning to Lowndes suggested to him that he should advise his client to agree to rectification of the decree.

The talk at the Bar that Russell was allowing himself unconsciously to be led by Inverarity had possibly reached his ears and he had evidently come determined one morning not to be so led. Curiously enough I or rather my client was a victim of this determination. Russell was taking chamber work that day and I was appearing in support of a summons and Inverarity was against me. On the previous day the client and the attorney instructing me held a conference with me. I told them that we had no case and were bound to lose. I advised the client to come to a compromise with the other side. He was, however, obstinate and wished me to fight it out. The next morning we appeared before Russell. I submitted my case and Inverarity opposed me. Russell decided in my favour. My client who was sitting behind me turned to me and said "You were advising us that we had no case but see the judge has decided in our favour." I told the solicitor that the client was getting elated for nothing for when the matter got to the Appeal Court, he was bound to lose and

would have to pay the costs in both courts. The other side appealed. A couple of days before the appeal was to be heard, the solicitor and the client came and offered me the brief to appear in the appeal. I repeated to them my view of the matter and said that it would be better for them if they instructed some other Counsel. The client however insisted that I should appear for him. When the appeal was called on, Sir Lawrence Jenkins, who had evidently read the paper-book, instead of calling upon the Appellant to address the Court, turned to me and asked me how I supported the judgment. I said all that could be said but the Appeal Court reversed Russell's order and made my client pay the costs in both courts.

Some years after his appointment Russell developed some ailment by which it was difficult for him to keep awake while sitting in Court. At intervals, he used to go to sleep. In order to awaken him the interpreter sometimes lifted a chair and put it back on the floor making sufficient noise. On one occasion, a case was going on before him in the Central Court. A witness was in the box and while the Counsel was examining him, Russell went to sleep. The Counsel had a brain wave and he shouted at the witness "Why don't you answer my question?" This woke up the judge and believing that the witness was recalcitrant and not answering Counsel's question, he turned to the witness and said angrily "Why don't you answer the question? If you behave like this, you will be sent to jail." The poor witness was much confused and said "How can I answer a question when no question has been put to me?" This caused considerable merriment among those present in court at the time. In order to shake off this tendency to sleep inspite of himself, the judge got a high table put in front of him and instead of sitting on a chair, he kept standing while hearing cases. Even so, there were moments in which he went to sleep standing.

Once Robertson and I were conducting a case before Justice Russell, I appearing for the plaintiff and Robertson for the defendant. During the cross-examination of my client, when some important questions were put and answers given, Russell had gone to sleep and that part of the evidence which was really important for the defence had not fully gone on his Notes. While this was happening I warned Robertson but somehow, Robertson did not take my warning. When we came to argue the case Robertson strongly relied upon particular answers that the plaintiff had given in cross-examination. Russell promptly contradicted Robertson and said that the witness had never said anything of the sort. He turned the pages of his Notes and said that he did not find there any such answers. I found myself in an embarrassing position. If Robertson had appealed to me or had asked the learned Judge to enquire of me whether those answers were given, I would have felt myself bound to tell what exactly happened. But neither Robertson nor the Judge said anything. In the result Robertson lost the case, I believe largely due to those answers not having gone down on the Judge's Notes.

One of his brother Judges sitting with him on the Appellate Side once treated him unkindly. Russell went to sleep just a little while before 2 p.m. when the Court rises for lunch. Aston, who was sitting with him, without disturbing Russell quietly rose at 2 p.m. and walked out, and the pleaders who were arguing then left the Court. Russell woke up after a little while, and finding the Court empty and his brother Judge gone, himself left the room.

Russell, when he was sitting in the Second Court on the Appellate Side taking criminal work, approached criminal cases in the right way by starting with the presumption that the accused was innocent unless the prosecution proved that he was guilty. I appeared for the accused in a criminal appeal before Russell and Aston and while I was arguing, the two learned judges began talking and Russell

talked sufficiently loudly for us at the bar to hear. He said to Aston "You as a Civilian Judge often start with a presumption in favour of the prosecution while I as a Barrister Judge start with the presumption that the accused is innocent and the prosecution must prove that he is guilty." The reflection by Russell on Civilian Judges as a class was certainly not justified. In the result, they disagreed, Russell holding that my client should be acquitted and Aston holding that he was guilty. The matter was referred to a third Judge Mr. Justice Batty, a Civilian Judge, who after hearing us, agreed with Russell.

Russell's observation about Aston's mentality was justified. When he was Sessions Judge at Poona, Mr. Chaubal appeared before him to defend an accused. When he was cross-examining one of the prosecution witnesses, the witness denied what Chaubal put to him. On that, Chaubal proceeded to further cross-examine him in order to show that the witness' denial was untrue. Ashton intervened saying: "I can't allow cross-examination upon cross-examination. The witness has denied what you put to him and you can't further cross-examine him on that statement." It was after considerable heated argument that he allowed the cross-examination to proceed. Once in the High Court when Branson was arguing a criminal appeal, he said that the only evidence against his client was accomplice evidence. Aston immediately said: "If you say that the evidence is of accomplices, you admit your clients' guilt." It took considerable argument for Branson to dislodge Aston from that position.

JUSTICE CHANDAVARKAR

About the end of 1901 Ranade fell ill and went on leave. Narayen Ganesh Chandavarkar was appointed to act for him. He had been selected to preside over the annual session of the Indian National Congress to be held at Lahore during Christmas week. After presiding at the Congress Session he assumed office as Judge in January

1902. He had been in active public life for many years and was a member of the Bombay Presidency Association and its Secretary. He had gone to England as one of the delegates of the Congress in the year 1885. He was a good platform speaker and often addressed public meetings. He was very studious as a lawyer and had compiled his own digest of law cases which he always kept up-to-date. That digest which had black covers and which came to be known at the Bar as Chandavarkar's Black Book was always his companion on the Bench. His constant study of case law and his keenness to consult authorities sometimes proved a hindrance to a correct appreciation of the merits of cases. If one properly appreciates facts then in a large majority of cases there is little difficulty in applying the law to the facts found.

I vividly remember what happened in a case of caste dispute in which Basil Scott and I appeared for the plaintiff and Inverarity appeared for the defendant. During the hearing of the case, Chandavarkar was looking into his Black Book and sending for authorities from the Library. The case lasted for several days. While Scott was replying Chandavarkar was still sending for some authorities. Scott said "If your Lordship will only put aside the authorities for the moment and follow my argument, you will know more about the case." There was another occasion on which the Black Book became the subject of comment. On the Appellate Side an appeal was being argued in which some question of law arose. Chandavarkar remarked that of late pleaders were not sufficiently assisting the Court by drawing attention to authorities bearing on the points arising. Mr. Kelkar, a pleader who had a great sense of humour was sitting in Court though not engaged in this particular case. He got up and said "The pleaders do not take much trouble to find out authorities because they know that Your Lordship has got them all in that Black Book."

In 1912 Chandavarkar retired on his acceptance of the post of Dewan of Indore State.

Many friends expected that I would be invited to succeed Chandavarkar as a Judge. I was, however, sure myself that with Scott as Chief Justice and Sydenham Clarke as Governor, any person taking an active part in politics would be avoided. I would record here an incident that occurred in this connection. One day as I was returning to my Chamber for the recess hour, Lallubhai Shah who was then Government Pleader accompanied me saying that he wanted to speak to me about an important matter. When we reached my Chamber, Lallubhai told me that as Chandavarkar was going to Indore it was eminently likely that I would be asked to succeed him as a Judge and he said that in that event, I should not refuse the offer. I assured Lallubhai that in my view, no such offer would be made as the authorities would not consider a person in active politics. I reminded Lallubhai how in 1909 contrary to all expectations Chandavarkar was ignored for the membership of Council and Chaubal was selected as he was free of any taint of politics. After a few days, it was announced that Lallubhai Shah himself was appointed to the vacancy. When Lallubhai had that conversation with me, he had no idea that the Judgeship would be offered to him. Lallubhai was a hard-working and conscientious Judge. He was not brilliant but he set a great example of a Judge aloof and detached and devoted to his work.

After relinquishing the post of Diwan at Indore Chandavarkar came back to Bombay and took part in politics. He later became President of the Bombay Legislative Council under the Montagu-Chelmsford reforms.

JUSTICE BATCHELOR

Batchelor was appointed a Judge of the High Court in the year 1904 superseding several I.C.S. men senior to him. It was said that Jenkins was much impressed by his judgments that came before him in appeal. Batchelor was for many years District Judge at Ahmedabad and he knew the Gujerati language very well. He was a student of

Gujerati literature, both prose and poetry. Soon after he came to the High Court, I was arguing an appeal before a Bench consisting of Jenkins and Batchelor. In the midst of my argument, Batchelor intervened and said something which showed that he had entirely missed the point of my argument. I turned to Mr. Dinshaw of Ardeshir, Hormusji and Dinshaw, Solicitors, who was instructing me and spoke to him in Gujerati. "આ પોરીઓ સમજ્યા વગર મુરખ જેવુ બોલે છે" ("This boy does not understand and is saying something very foolish"). I did not realise then that I had said this sufficiently loudly for Batchelor to hear. About a month afterwards I was at a dinner at Mr. Justice Batty's house and Batchelor was next to me at the table. After some conversation he spoke to me with a smile in Gujerati:

તમે તે દીવસે મારી સખત ઝાટકણી કહાડી
હું ખરેખર મુરખ જેવુંજ બોલતો હતો.

("You came down upon me heavily the other day when you were arguing an appeal. I was truly foolish").

On another occasion, on the Original Side, Batchelor was trying a case in which the question was about the construction of a Will in the Gujerati language. The whole thing turned on the sense in which the word તો was used by the testator in a particular sentence. When I submitted my interpretation Batchelor agreed with that and said તો here is used in the same sense in which તો had been used by the Gujerati poet Dayaram in a particular couplet and he repeated the couplet in Gujerati.

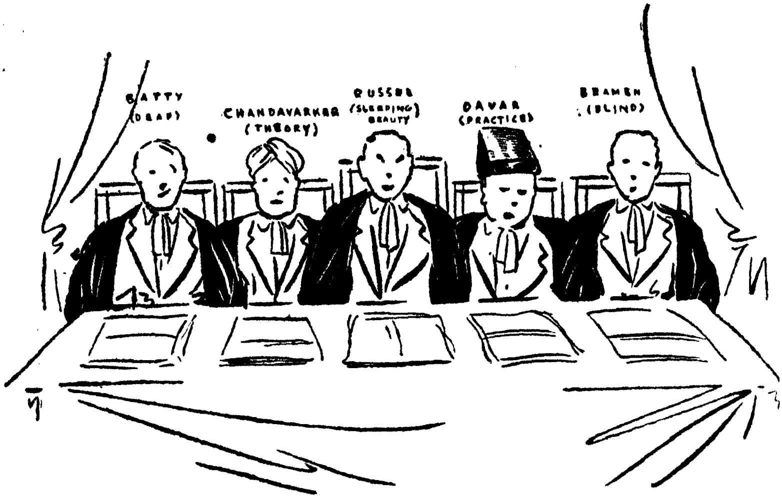
JUSTICE BEAMAN

Beaman was appointed a Judge in 1907. Beaman was a highly intellectual person, well-read and had great command over the English language. He was, however, handicapped by defective eye-sight. He was able to see only from a particular angle and reading and writing were very difficult for him. He had, however, wonderful memory and at the end of the hearing of a case, he would deliver judg-

ment straightaway referring in detail to the evidence and exhibits in the case. He used to record evidence by typewriter and he touched the right keys and typed without looking at the typewriter.

Beaman had abundant self-confidence and considered himself a superior person. Even when he had to follow a decision of the Privy Council, he would criticise the judgment and would point out what he thought was bad reasoning. Once he was sitting with Lawrence Jenkins on the Appellate Side and I appeared on one side and Ganpat Sadashiv Rao on the other. The question at issue turned on the interpretation and effect of the arbitration schedule of the Civil Procedure Code. The view that I was submitting was supported by the decisions of three High Courts. When I argued relying on these authorities, Jenkins appeared to be in my favour while Beaman was evidently taking the opposite view. During my argument, Beaman tried to point out how in his view the Judges of the other High Courts on which I was relying were mistaken. I tried my best to answer him and ultimately in despair said "I have nothing more to say. I have on my side the view of 10 Judges of three High Courts. It is possible, however, that they are all wrong and Mr. Justice Beaman is right." Judgment was reserved.

After some time Beaman went on leave and the judgment of the court remained undelivered. We all expected that judgment would be delivered on his return from leave. Some days afterwards the appeal was put down for fresh hearing before Jenkins and Chandavarkar. Rao and I both thought that instead of being put to the trouble of arguing the appeal over again, judgment could be delivered after the return of Beaman. We therefore, mentioned this to Jenkins but he said that it was no use waiting for Beaman's return. The appeal was heard and Chandavarkar agreed with Jenkins and judgment was delivered in my favour.



Beaman had a great sense of humour. Once he was sitting in a full bench consisting of Russell, Chandavarkar, Batty, Davar and himself and he described to a friend the bench in the following couplet :

The Blind to the left and the Deaf to the right
Theory and Practice on either Side
And the Sleeping Beauty in between.

JUSTICE KHAREGHAT

Mr. M. P. Khareghat came to the High Court as an acting Judge in the year 1907. This was the first time that an Indian I.C.S., was brought to the High Court. Till then senior Indian Civilians in the Judicial branch had been ignored for vacancies in the High Court. Mr. Khareghat would have been confirmed as a Judge but for his conscientious objection to sentence any person to death. As a Sessions Judge, he had always refrained from imposing capital sentence. When the time came for his confirmation he made it clear to the Chief Justice and Government that he would never impose capital punishment. Under the circumstances, Government found themselves unable to make him permanent.

In this connection, I am reminded of what happened in a murder case many years ago. Three persons were convicted of murder by a Sessions Judge in Gujerat and were sentenced to be hanged. The capital punishment was confirmed by the High Court. On the petition of the accused, however, Government commuted the sentences to transportation for life and the convicts were sent to the Andamans. Three years afterwards, another murder took place in the same locality and some other persons were tried for the offence and were convicted. In the course of the trial, it was conclusively established that the first murder had also been committed by the accused in the second murder case and not by the accused who had been convicted for it and sent to the Andamans.

When the matter came up before the High Court, this conclusion was accepted by the High Court who thereupon communicated to Government their view that the accused who had been transported to the Andamans were really not guilty. On this, Government took action and those men were pardoned and released. If unfortunately the original death sentences passed upon them had not been commuted, those three innocent people would have been hanged. It is on considerations based on such possibilities that capital sentences have been abolished in some countries. One cannot, therefore, blame Mr. Khareghat for having conscientious objection to capital punishment.

CHIEF JUSTICE MACLEOD

N. C. Macleod who was Official Assignee was temporarily appointed as Judge to hear Land Acquisition cases and was later confirmed. On the retirement of Scott in 1919 he became Chief Justice. He had a very quick grasp and insatiable greed for work which at times made it difficult for counsel as well as the Judge sitting with him to keep pace with him. He knew human nature very well and had an uncanny faculty for spotting

the truth. But parties as well as counsel often felt that they did not get a full and patient hearing. When once he formed a view, he often rendered himself unreceptive to arguments favouring a contrary view. It is not enough in the administration of justice that justice is done but it is also essential that litigants and counsel must feel that justice is being done to them. When the Bar welcomed me on my assumption of office as Judge in June 1920, I emphasised this in my reply. Macleod worked hard and expected his brother judges to do the same. During the last war the filing on the Original Side in one year rose to 9,000 and still the work was speedily cleared though there were only seven judges in those days. Macleod was very human and was always ready to assist any one in difficulty. Lady Macleod did very creditable humanitarian work among the poor in Bombay.

CHIEF JUSTICE MARTEN

In 1916, Amberson Marten was appointed a puisne judge. Marten was very good in law and was hard working and his judgments were sound. He was sometimes meticulously particular about small matters. If the same name was differently spelt, at different places in pleadings or affidavits, he would get annoyed and ask the necessary corrections to be made before proceeding further. When Macleod retired in 1926 Marten was appointed Chief Justice. As Chief Justice, he began to attach rather an exaggerated importance to what was called "administrative work." Almost every week, the courts rose early in the evening on some days for administrative work. Once one of the Judges was occupied entirely in administrative work for nearly a month. It was said that one of the items at a Judges' meeting was approval of the cloth to be used for the Court's *Chopdars* and peons! During the regime of the previous Chief Justices, one never heard of administrative work and such work never curtailed the hours of court work. Similarly after the retirement of Marten, during the

13 years' tenure of Sir John Beaumont, there was no mention of administrative work.

CHIEF JUSTICE BEAUMONT

On Marten's retirement, Sir John Beaumont became Chief Justice. He had abundant common sense and was clear-headed. Evidently, he had no ambition to write elaborate judgments for the benefit of posterity; almost always he used to deliver oral judgments on the spot. On the retirement of Sir John Beaumont, there was naturally great expectation that an Indian would be appointed to succeed him but that expectation was not fulfilled. The Original Side Bar at a special meeting held for the purpose on April 12, 1943 passed the following resolution which was moved by me.

> "The Bombay Bar Association records its emphatic protest against the appointment of an English Barrister as Chief Justice of Bombay in succession to Sir John Beaumont, passing over the most senior Puisne Judge who is a member of the Bombay Bar and happens to be an Indian. It is highly regrettable that when an opportunity presented itself of appointing an Indian Chief Justice it was not availed of. This Association views with grave dissatisfaction this action on the part of the British Government, which, in the opinion of this Association, is an unmerited reflection both on the Indian members of the Judiciary and the Bar."

It must here be stated that both the Governor and Chief Justice had sounded my son Motilal sometime in 1941 whether he would accept the Chief Justiceship if it was offered to him. He, however, expressed his unwillingness to accept the post. No attempt was thereafter made to find a suitable Indian to fill the post.

SOME PRACTITIONERS

THE leading practitioners on the Appellate Side at the time when I joined the Appellate Side Bar were Vishvanath Narayen Mandlik, Government Pleader, Vasudev Kirtikar, Ghanshyam Nilkanth, Maneksha Talyarkhan, Mahadev Chimanaji Apte, Ganpat Sadashiv Rao, Shamrao Vithal, Narayen Chandavarkar, Govardhanram Tripathi and M. B. Chaubal.

Vishvanath Narayen Mandlik was a prominent figure in the public life of India and had distinguished himself in the legislatures, both local and central. He was a great Sanskrit scholar and his work on Hindu Law was regarded as an authority. I came in contact with him in some cases and he treated me kindly. His son, Sir Narayen Mandlik, has been my friend for many years.

Shantaram Narayen was a man of keen intellect and a student of English literature. His language and advocacy were unrivalled. I remember an occasion when Shantaram Narayen and Vasudev Kirtikar were arguing on opposite sides regarding the construction of some provisions of the Bombay Talukdari Act. When Vasudev Kirtikar finished his arguments for the appellant, the court was so convinced about the correctness of Vasudev's view that West turned to Shantaram and said, "Mr. Shantaram, the construction submitted by Vasudev Kirtikar is clearly right. What have you to say?" Shantaram rejoined: "The construction is certainly clear but it is quite the contrary to what my learned friend says it is." Then Shantaram proceeded to propound his view for over an hour at the end of which West said: "You are right Mr. Shantaram. The construction is clear as you have put it." Vasudev in reply could not dislodge the opinion of the judges and Shantaram won.

Maneksha, Ghanshyam, Rao and Chandavarkar had considerable practice.

Govardhanram Tripathi had high literary qualifications and was a prolific writer in the Gujerati language. His *Saraswatichandra* in several volumes is a standard Gujerati novel and is largely read.

On the Original Side, Latham was Advocate-General. The other leading figures were Lang, Farran, Macpherson, Inverarity, Badruddin and Telang. Pherozeshah Mehta's practice was mainly on the Appellate Side and in the mofussil courts. Scott, Raikes and Lowndes came to the Bar later. Badruddin and Telang had good practice. There were other Indians like Vicaji, Dhairyavan and Mankar but they were never in large practice. Davar was in those days practising in the Small Causes Court and he came to the Original Side many years afterwards.

JOHN MACPHERSON

Macpherson had large practice. His language and diction were perfect and he commanded great respect from the Bench. I used often to brief him on the Appellate Side when I was a pleader and we were on friendly terms. It was he who pressed me and ultimately persuaded me to get enrolled as an Advocate on the Original Side.

H. C. KIRKPATRICK

Kirkpatrick who was one of the seniors was a short, thin man. He was staying at the Yacht Club Chambers, and used to come to court on a cycle. A very amusing incident about him occurred in the court of Justice Tyabji. He and Davar were appearing on opposite sides in a suit between two English firms. The correspondence between the Bombay Offices and the Head Offices in London had been disclosed as usual. Davar was reading the correspondence between the Bombay Office and the Head Office of his clients. One letter of a particular date was not in the

compilation. Its receipt, however, was referred to in the next letter from the Head Office. When that next letter was being read, Kirkpatrick demanded that the letter that had not been disclosed but the receipt of which had been acknowledged in that subsequent letter should be disclosed. Davar said that that letter was merely formal and there was nothing in it relevant to the issues in the case. Kirkpatrick, however, insisted on the production of that letter. Davar told the Judge that he would hand over that letter to him and the Court would see that it was absolutely immaterial. Davar handed over the letter to the Judge who after reading the letter turned to Mr. Kirkpatrick and said that there was nothing in that letter of any relevance and he should not worry about it. Mr. Kirkpatrick, however, insisted that he was entitled to have a look at it. The judge handed over the letter to Kirkpatrick. All that the Bombay Office had said in the letter was to this effect. "We have engaged on our behalf all the leading counsel here while the other side has succeeded in securing the services of a counsel whose sun has set long ago." Kirkpatrick must then have realised the truth of the saying "where ignorance is bliss it is folly to be wise."

J. D. INVERARITY

Inverarity was foremost among the practitioners on the Original Side. In his arguments he was always to the point and effective. He was very good at cross-examination and got out from a witness what he wanted in the shortest possible time. There are some clients, however, who do not appreciate this, and are disappointed if their counsel does not lengthily cross-examine their opponents. I remember being present in court when a suit between two Arab merchants who were on very bitter terms was being fought. Inverarity was instructed by Mr. Gulabchand of Edlow, Gulabchand and Wadia and the Arab client was sitting behind him. Inverarity rose to cross-examine the

plaintiff and finished in three quarters of an hour getting out from the witness all that he wanted. When he sat down, the defendant was surprised and annoyed and spoke to Gulabchand in Hindustani something to the following effect: "Why have you got me a Barrister who cross-examines the plaintiff for such a short while? That rascal should have been battered in cross-examination for a couple of days."

Inverarity had a marvellous memory. I remember a case that was being argued before Justices Chandavarkar and Ashton, in which Inverarity and I appeared for the plaintiff and Raikes appeared on the other side. The evidence had already been taken before Justice Tyabji and he having gone on leave before he could deliver judgment, this Bench of two Judges was appointed to hear arguments and give judgment. The Paper Book containing the evidence ran into seven or eight hundred pages and the arguments lasted for a full week. One day during the course of argument, reference was made to a certain statement that counsel knew had been made by a witness but neither Raikes nor myself could spot the place where it appeared in the Paper Book. Both Raikes and I were turning the pages in order to find that particular answer. At that moment, Inverarity stepped in and asked me what we were fumbling about. I told him what we were searching for and he at once said "Turn to page so and so and you will find it just at the top of that page." We turned to that page and we found it.

He never made any notes and never made any marks in his brief. He kept no Library of Law Reports, but he read the Law Reports in the High Court Library and whenever occasion arose, he could put his hand on the wanted reference. He died in Bombay and his loss was keenly felt by the Court and Bar. The Courts closed for a day in respect of his memory.

BASIL SCOTT

Scott was tall and had a commanding personality. He was, however, not effective as counsel and was a poor cross-examiner. Once he put an argument, he was indifferent whether the judge had understood it properly and grasped the point. If the junior counsel sitting by him urged him to make sure that the judge had caught the argument advanced, he would say: "I have put the point. It is for him to understand it. I cannot repeat it." Once I was appearing with him as his junior. Scott began the cross-examination of a witness on the other side at about quarter past four. A few minutes before five, he turned to me and said: "I think we have nothing more to ask him." In my view there was considerable room for further cross-examination. I knew that Scott was not going to attend to the case next morning as he had to be in another court. I therefore asked him not to finish the cross-examination that evening. The next day I resumed the cross-examination and took nearly an hour in the course of which I venture to say I got from the witness some important admissions.

E. B. RAIKES

Raikes was a hard-working and tenacious lawyer. He was, however, excitable and if either the judge or the opposing counsel contradicted him or controverted his argument, he used to clench his fists and bite his lips. When we were engaged on opposite sides in a suit by the Official Assignee against the Shirazees which was heard by Justice Beaman for many days, I had a little row with him.

Raikes was for the plaintiff. Branson was for some defendants and I appeared for other defendants. Though Branson on behalf of his clients was cross-examining the plaintiff's witnesses first, he did so only in a general way leaving the cross-examination in detail to me. Raikes had just finished the examination-in-chief of a witness and Branson had risen to cross-examine him. I expected that

my turn for cross-examination would come in half an hour and that my cross-examination would last for some hours. There was a case on the Board of Justice Davar in which Raikes and I were appearing together. That case was not expected to come on for some days and so we had made no arrangements about it. Justice Davar's Board, however, suddenly collapsed and our case was expected to be reached in a short time. The Attorney instructing Raikes and me in that suit came to Beaman's court where we were and asked Raikes to go to Davar's court. He told the attorney to ask me to go there. When the attorney spoke to me I explained to him that I would have very soon to cross-examine the witness here and my cross-examination would take some hours and so Raikes could well go into Davar's court and his junior could take notes of my cross-examination.

The solicitor went to Raikes again and told him this. On that Raikes rose from his seat and came to me and biting his lips said "I ask you as Advocate-General (he was then acting Advocate-General) to go to Davar's court." I was very annoyed at his behaviour and used unparliamentary language saying "The Advocate-General be blowed." This upset Raikes very much and he turned to proceed to go to Davar's Court. In his excitement while going down the steps of the dais, he missed a step and fell down. I was subsequently informed that he told Justice Davar that his junior (myself) refused to get into the case and asked for an adjournment which was granted. All this happened before the recess hour. When I was told what had happened in Davar's Court, I went to that Court at 3 p.m. and explained the real facts to the learned Judge.

SIR THOMAS STRANGMAN

Strangman was very industrious and hardworking and always worked himself up to believe in the absolute justice of the case of his client. We were often together on one side or on opposite sides in various cases. He was appointed

Advocate-General in succession to Basil Scott. His appointment at the time created some surprise as there were some counsels in good practice who were senior to him. At one time he retired from practice and M. R. Jardine was appointed in his place. He came back later and was re-appointed Advocate-General. It was said that when Marten retired, Strangman was sounded whether he would accept the Chief Justiceship. But he was not willing to take it. When I visited England in 1926 and 1927 and again in 1929, I met him in London.

D. N. BAHADURJI

I knew his brother the late Dr. K. N. Bahadurji who was in public life with Pherozeshah and myself. Ever since I came to know Bahadurji, we have been good friends. Bahadurji is a man of considerable courage and self-confidence. He always stands up for what he thinks is the right view and maintains his view obstinately. He was once offered acting judgeship but he did not take it. He acted as Advocate-General twice. Mr. Bahadurji and Prof. K. T. Shah were appointed by the Congress to report about Indian Public Debt incurred by the Government of India. Their report recommended the repudiation of the country's debt which was incurred without the consent of the people of India. This led to the insertion of stringent safeguards for British interests in the Government of India Act of 1935.

M. A. JINNAH

Jinnah came to the Bar in 1895 when I was still on the Appellate Side. After I came over to the Original Side, I came in contact with him and we used to appear together as well as against each other in various cases. Jinnah had always, even in his junior days, shown considerable independence and courage. He never allowed himself to be overborne either by the Judge or the opposing Counsel. Once Strangman and Jinnah were briefed together in a case and Jinnah attended a consultation in

Strangman's Chamber. It was said that during the consultation, Strangman spoke to Jinnah in a manner which the latter regarded as insulting. Ever since, Jinnah always refused to go into Strangman's room for consultation and they never talked to each other. I remember an episode in the court of the late Justice Mirza. Jinnah and myself were appearing on opposite sides and there were other counsel appearing for some of the various parties in the suit. During the course of argument, Jinnah addressed the judge in a manner which the judge resented. Justice Mirza told Jinnah that he was committing contempt of court. Strangely enough, the judge turned to me and said "Don't you think Mr. Jinnah is guilty of contempt of court"? It was indeed stupid of the judge to have put such a question to me. I answered "It is not for me to give an opinion whether Mr. Jinnah had committed contempt or not. It is your privilege to determine that but I can say this that knowing Mr. Jinnah as I do, he could never have intended to insult the court." Jinnah thereafter ceased to appear before this judge for some time.

I came in close contact with Jinnah in public life. We were together in the Congress for many years. We led the agitation against the Simon Commission in Bombay. We were together in the old Imperial Legislative Council and the Indian Legislative Assembly and also at the Round Table Conferences. Our personal relations have always been cordial. In the part "Politics" I will refer to him again.

PERSONAL FRIENDS AT THE BAR

AT the bar, I have made many friends but my friendship with Kanga, Bhulabhai, Taraporewala and Munshi has been very intimate and lasting.

JAMSHED KANGA

Jamshed Kanga joined the bar as an advocate in 1903. He soon afterwards came in contact with me and appeared as my junior in many cases. By his industry and devotion to the profession, he soon attained a prominent position at the Bar which he still enjoys. My exhortation to young members of the Bar to take part in public affairs has had no effect on Kanga who has devoted himself wholly to his profession. On my resigning the additional judgeship in October 1920, Kanga was appointed in my place. In the year 1922, Sir Thomas Strangman resigned the post of Advocate-General and an appointment had to be made to fill the vacancy. I was then a member of the Executive Council of the Governor of Bombay in charge of the Legal Department. Proposals for filling the vacancy had to be initiated from the Legal Department. The choice lay between Kanga who was then Additional Judge and Bhulabhai Desai. Both were my personal friends for whose qualifications, I had a high opinion. Making a choice was therefore difficult. Ultimately, however, Government decided to appoint Kanga. He held the appointment till the year 1935 when he resigned. He was knighted in 1928.

VICAJI F. TARAPOREWALA

Taraporewala was for sometime practising as pleader in Rajkot. Then he became a Barrister and began to practice at the High Court. He soon made progress and was briefed with me as my junior in many cases. He also like Kanga has not taken any part in public affairs. In May

1924, he was offered an Additional Judgeship which he accepted. He resigned his judgeship in 1926 and reverted to the Bar as he was not given one of the permanent judgeships while another Additional Judge Mirza Ali Akbarkhan who was junior to him was given the appointment. He acted as Advocate-General on several occasions.

BHULABHAI DESAI

It was in the year 1895 that I met Bhulabhai Desai as a young boy studying at College. His father Jivanji Desai who was practising as a Pleader at Bulsar, was one of the voters for the election of a member of the Legislative Council of the Governor of Bombay to represent the Northern Division of the Presidency. Gokuldas and I were contesting the seat. I visited Jivanji at his house at Bulsar and he agreed to vote for me. If I remember right, Bhulabhai was present at the interview. Bhulabhai after getting his M.A. degree became Professor of Economics at the Gujerat College, Ahmedabad. He then became an Advocate in 1905 and joined the Bar.

After that Bhulabhai appeared in many cases with me as my junior. He soon came to the front rank. In those days, my complaint was that young people at the Bar were not taking their due part in public affairs and I used to take every opportunity to tell young members of the bar that it was their duty to take part in public activities. Bhulabhai was a member of the Liberal Party for many years. At the Bombay session of the Federation held in 1927, he supported the main resolution for the boycott of the Simon Commission. After his resignation from the Liberal Party in 1931, he became an active member of the Congress. My personal relations with him became very close and have remained so. He is an impressive and fluent speaker on the platform and has made his mark as leader of the Congress opposition party in the Central Legislative Assembly. He acted as Advocate-General for some time.

When I was knighted in 1919, Bhulabhai in his letter of congratulation to me at Calcutta said:

2nd January 1919

My Dear Chimanlal,

On this unique occasion I prefer a letter to a telegram for the former strikes me as conveying a more personal note than the latter.

The high distinction conferred upon you does not come to anybody as a surprise, for it has been richly earned by quiet and useful services rendered to the public cause for a quarter of a century. As Beaman would say, you look so infernally young that it is difficult for me to go back so far as the commencement of your public career.

The distinction bears to my mind a very personal aspect. I have been far removed from you in public life for the reason that I have made comparatively small progress in that direction but in the profession and in personal friendship, I claim to stand as near to you as almost anybody I can think of outside your family. I rejoice in the honour as if it was conferred upon me.

This is the first instance of a member of the Bar having attained to this position. Yet, you know, as well as I do that the Bar here is such a medley that one regrets they will never appreciate this at its proper worth. Your real satisfaction is duty well done and next after that the appreciation of those who have the sense and the sanity to see where the true interests of India lie.

May God spare you long to enjoy this well-merited distinction and to serve the best interests of the country which you love and serve more truly than those who profess to do so.

Yours sincerely,
B. J. Desai

These extracts show the regard and friendly feeling he entertains towards me. It also shows that Bhulabhai was not till then an admirer of Congress politics.

K. M. MUNSHI

Hardevram Anupram, uncle of K. M. Munshi was a great friend of my father. Munshi's father Maneklal who was a Deputy Collector was also a friend of my family. In the year 1895 when there was a keen contest between me and Goculdas Parekh for a seat in the Bombay Legislative Council, Maneklal was one of the voters and he voted for me.

When young Munshi became an Advocate and joined the bar, he came in contact with me and we worked together in many cases. Munshi soon began to take part in politics. He was a member of the Congress and the Home Rule League till 1920 and resigned from the League and the Congress along with Mr. Jinnah in that year. He represented the University in the Bombay Legislative Council for many years and took a leading part in the passage of the University Bill of 1927. It was not till 1930 that he joined the Congress again. When Mr. Gandhi started the Dandi march and the non-co-operation movement, I vividly remember Munshi coming to my Chamber one evening and telling me that he had decided to join the Congress. I tried to persuade him not to do so but I found that he had worked himself to such an emotional pitch that my advice would have no effect on him. He went headlong into the movement and suffered imprisonment for nearly two years.

When in the early part of 1937, ministries were going to be formed under the new Act, Munshi came to me and sought my advice as to what department he should take in the ministry. I advised him to get the Legal and Home portfolios. As Home Minister he acted strongly in putting down riots and disturbances. In other directions his very

strength and determination led him and the Congress Ministry to disregard all opinions but their own and led to considerable public discontent. Our personal relations in spite of violent differences of opinion have remained most friendly throughout. Munshi's output of literary work is really phenomenal. With his large practice as a lawyer, one wonders how he is able to turn out such a large quantity of literary work. He has no less than forty pubilcations of merit to his credit.

RUSTOM WADIA

In many cases Wadia worked as my junior, specially in the court of Justice Beaman where he was much in demand. Wadia besides practising as a lawyer was running the Automobile Company. Ever since 1905 upto 1937, all the motor cars that I bought from time to time were supplied by that Company. Since 1926, when I began going to Europe every year, I and Wadia used to meet very often in London, Vienna and other places and became very friendly.

N. H. MOOS

Moos was a solicitor and partner in the firm of Payne & Company. He attended to the litigation between Haji Bibi and the Aga Khan, on behalf of the Aga Khan. Justice Russell who heard the suit complimented him for the able manner in which he had examined witnesses on commission and prepared the case. Moos thereafter qualified as a barrister and joined the Bar. He later took the appointment of Official Receiver and continued as such till the post was made stipendiary. From 1932, I and he worked together in various important matters for Kutch State for many years. I and he used to meet in London, Paris, Vienna, Monte Carlo and other places. Since the outbreak of the European War, he has gone to America and he is still there.

SOME CASES

THIS chapter deals with some important cases in which I appeared as counsel. Besides these cases, are also included some important ones in which I did not appear as counsel but which will be of interest to the reader.

DAKOR TEMPLE

The first case of importance in which I appeared soon after enrolment as a Pleader on the Appellate Side was the Dakor Temple Case in 1887. That temple which is situated at the town of Dakor in the Kaira District, contains an idol of God Shree Ranchhodraiji who is held in great veneration by the followers of the Vaishnava religion throughout Western India. The temple was built in A.D. 1772 by Gopal Jagannath Tambekar at a cost of one lakh of rupees and the Gaekwar of Baroda endowed in perpetuity the revenues of the villages of Dakor and Kanjeri to the temple. The throne of the idol was covered with gold and silver by H.H. the Gaekwar at a cost of Rs. 1,25,000. Tambekar was the hereditary manager and trustee of the endowed villages. Connected with the temple are many families of Brahmins who are called Shevaks, succeeding to their office by hereditary descent. They were in constant attendance on the idol and performed the daily services and kept in their custody all the cash, ornaments, clothes and other offerings dedicated to the idol. Also connected with the temple were the *Gors* or priests who conducted the pilgrims, their *yajmans* or patrons, to the shrine and performed the worship of the idol on their behalf.

Tambekar and some of the *Gors* filed a suit against the Shevaks under section 539 of the C.P.C. to have them declared trustees of the offerings to the deity and to take accounts of their management. The District Judge of Ah-

medabad having dismissed the suit, the plaintiffs appealed to the High Court. Telang with Shantaram Narayen appeared for the appellants. Macpherson with Vasudev Kirtikar and Gokuldas Parekh appeared for the respondent Shevaks. I was given a junior brief. The Shevaks took up the position that they were the owners for all secular purposes of the idol who in the spiritual sense they served and contended that all the offerings belonged to them free from secular obligations. The High Court (Justices West and Birdwood) held that Shevaks were Trustees of the offerings, etc., and were answerable as such. They said that it was indeed by strange if not wilful confusion of thought that the Shevaks set up Shree Ranchhodraiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but as a mere block of stone, their property, for the purpose of their appropriating every gift laid at its feet. The High Court directed that a scheme be framed for the future management of the temple and its funds, giving due consideration to the established practice of the institution and to the position of the Shevaks. The Court also directed that a Receiver be appointed of the properties of the temple pending the framing of the scheme.

The Shevaks appealed against this decree to the Privy Council and the appeal was heard in 1899. The Shevaks engaged me to go to England to instruct counsel there on their behalf. Sir Henry Maine, the author of *Principles of Hindu Law* was engaged for the appellants. I was present at the hearing of the appeal which was heard by Sir Richard Couch, Lord Macnaughton and a third judge. The Privy Council confirmed the decision of the High Court. A scheme was ultimately framed by the High Court in which suitable provision was made for the maintenance of the body of Shevaks.

THE BHADBHUT CASE

In 1889 an Indian Assistant Collector had his camp at Bhadbhut, a village in the Broach District. At some dis-

tance from his camp, some Hindus were cremating a dead body on the bank of a river and the smoke emanating therefrom came in the direction of the Assistant Collector's tent. It was alleged that the Assistant Collector ordered the funeral pyre to be exinguished and the body removed from the spot. The incident caused a great sensation at that time and a committee of Bombay citizens was appointed to take necessary measures in the matter. On representations being made to Government, they appointed Mr. Allen, the Collector of Broach, to investigate the matter and to make a report to the Government.

The enquiry was held at Bhadbhut. Mr. Anderson, a Barrister, myself, and the late Motilal Munshi instructed by Gilbert of Payne, Gilbert and Sayani appeared for the villagers in support of the complaint. Pherozeshah Mehta appeared for the Assistant Collector. As a result of the enquiry, the Assistant Collector's promotion was stopped for some years.

TILAK TRIALS

On June 13, 1897, there was published in the columns of *Kesari*, a newspaper then edited by Tilak, a report of the proceedings of the festival held in commemoration of the coronation day of Shivaji at Raigarh. On June 22, Rand and Lt. Ayerst were murdered by some unknown persons. The issue further contained a historical lecture about the killing of Afzulkhan by Shivaji, together with the report of speeches made at the festival, one of which was delivered by Tilak himself in which he defended the action of Shivaji as justifiable. In the same issue of *Kesari* were published a collection of Marathi verses describing an imaginary awakening of Shivaji from the sleep of centuries and representing him as lamenting in figurative language the decadence of Maharashtra as well as discoursing upon other matters in a spirit of discontent.

On July 27, the Government of Bombay instituted a prosecution against Tilak on a charge under section 124A of the Indian Penal Code for exciting disaffection against the British Government. Tilak was arrested the same night in Bombay and an application for bail made to the Chief Presidency Magistrate was refused. An application was then made to the High Court for bail which was also refused. The case was committed to the sessions on August 2, 1897 and an application for bail was made to Mr. Justice Tyabji, the sitting judge in chambers. The application was made by Mr. Davar who by an irony of fate was the judge who tried Tilak for a similar offence in 1908 and sentenced him to six years' imprisonment. Mr. Justice Tyabji granted bail on deposit of Rs. 50,000 in cash. Tilak was made to wait in the Prothonotary's office till the bail amount was produced. Mr. Dwarkadas Dharamsy was taking interest in the defence. In a short time, he produced the necessary amount and Mr. Tilak was released. I took him in my carriage to Girgaum where he was staying with the late Daji Abaji Khare.

The trial began before Mr. Justice Strachy and a special jury consisting of six Europeans, two Hindus and one Parsee. Tilak was defended by Mr. Pugh, then a leading barrister of Calcutta assisted by Mr. Garth, and the trial lasted for a week and excited great interest throughout the presidency. The court and the galleries were packed and arrangements had been made to accommodate on either side of the Judge on the dais some prominent ladies and gentlemen, both European and Indian. At the end of the trial, the jury was divided in their opinion, six European jurors giving a verdict of guilty while the three Indian jurors held the accused not guilty. Mr. Justice Strachy accepted the verdict of the majority and sentenced Tilak to eighteen months' rigorous imprisonment. An application was made to the judge on behalf of Tilak when the jury retired to consider their verdict, to reserve for the consideration of a full bench certain points of law arising from the

judge's charge to the jury but this was refused. An application was then made for leave to appeal to the Privy Council which was heard by a Bench consisting of Chief Justice Farran, Justice Candy and Justice Strachy. This was also refused. Following this, an application was made to the Privy Council for special leave to appeal and Mr. Asquith (later Lord Asquith) appeared for Tilak in support of the application but it was rejected.

Sometime in October I sought an interview with Lord Sandhurst, the Governor of Bombay, and put to him that it would be a very good gesture on the part of Government if they commuted the sentence passed on Tilak to the period already suffered and release him. I urged that the law had been vindicated by the conviction and the commutation that I suggested would create a very good feeling in the minds of the public who undoubtedly held Tilak in great esteem, while on the contrary, making him serve the full sentence would enhance the bitterness against Government and make Tilak a greater hero. Apparently Government had no use for my advice and no action was taken.

SECOND TRIAL OF TILAK

In 1908 Tilak was again prosecuted under Sections 124A and 153A for certain articles in *Kesari*. He was arrested on June 24, 1908 and bail was refused by the Chief Presidency Magistrate. On July 2, an application for bail was made by Mr. Jinnah on behalf of Tilak to Justice Davar and this was refused.

The trial opened before Justice Davar and a special jury on July 13. At the first trial of Tilak, Davar had appeared for Tilak and Dwarkadas Dharamsy had furnished the bail amount. On this occasion Davar was the judge and Dwarkadas Dharamsy was Sheriff of Bombay and as such, he sat alongside the judge all throughout the trial. Branson, acting Advocate-General, conducted the prosecution and Mr. Tilak conducted his own defence. The trial began on the 13th and ended on July 22.

The jury were divided in their opinion. Seven jurors who happened to be Europeans gave a verdict of guilty while two who happened to be Indians returned a verdict of not guilty. The judge accepted the verdict of the majority and sentenced Tilak to six years' transportation and a fine of Rs. 1,000. In passing sentence the judge said, "It is most desirable in the interest of peace and order and in the interest of the country which you profess to love, that you should be out of it for some time." The veiled insinuation contained in the words "the country you profess to love" was very much criticised as an undignified sneer on the part of the judge. In contrast to this what Mr. Broomfield, as Sessions Judge of Ahmedabad said in passing sentence on Mr. Gandhi stands in great relief.

After the conviction, Lord Morley, Secretary of State, wrote to Sydenham on July 31, 1909:—

> "I won't go over the Tilak ground again beyond saying that, if you had done me the honour to seek my advice as well as that of your lawyers, I am clear that it should not have been so dangerous as the mischief that will be done by his sentence. Of course, the milk is now spilled and there is an end of it."

Sydenham tried to explain his point of view to Morley but he stuck to his opinion and in his letter to Sydenham wrote on August 7,

> "Your vindication of the proceedings against Tilak does not shake me. That they were morally and legally justifiable is true enough and that the result may bring certain advantages at the moment is also true. But the balance of gain and loss, when the whole ultimate consequences are counted up, that is the only political fact. Time must show."

On July 1, 1910, Lord Morley issued orders that Local Governments before launching a political prosecution should refer the matter to the Government of India.

TAI MAHARAJ CASE

Tilak was destined to be involved in heavy litigation in what was known as the Tai Maharaj Adoption Case in which very serious aspersions on his probity and character were cast in the judgment of the High Court pronounced in September 1910 and he suffered under that stigma for nearly five years till in January 1915, he was thoroughly vindicated by the judgment of the Privy Council on appeal who held that there was not the slightest justification for what the High Court had said about him and reversed the judgment of the High Court with costs throughout. The litigation arose under the following circumstances:

One Baba Maharaj who was possessed of considerable property died in 1897 leaving a widow Sakvarabai popularly known as Tai Maharaj who was *enciente*. He directed that if the widow did not give birth to a son or if the son born was short-lived, a boy should be adopted with the consent of his executors and trustees. Tilak and Khaparde were two of the four trustees named. In July 1900, a boy who was selected by Tilak and Khaparde was duly adopted and a deed of adoption was executed to which the widow was a party. The widow subsequently disputed the adoption and adopted another boy. A suit was filed by three of the trustees including Tilak and Khaparde to establish the first adoption. The Subordinate Judge who heard the suit held in favour of the adoption. Tilak was under cross-examination for five days in the trial court.

The High Court (Justices Chandavarkar and Heaton) reversed the decree of the Subordinate Judge. Justice Chandavarkar in his judgment stated, "We are driven to believe that a considerable number of men of good position have conspired together to give false evidence." The Privy Council characterised this conclusion as being of the most serious character amounting to plain judicial finding of conspiracy and perjury. They further proceeded to say "It is *a priori* difficult to understand how these

men with no object to gain and no interest to serve are supposed to have entered into the conspiracy and committed the perjury which the High Court found. Their Lordships think the conclusion came to by the learned judges to be entirely unwarranted by the facts."

With reference to the serious irregularity of certain statements made by witnesses in a criminal Court being used in the civil suit without having been put to the witnesses, the Privy Council said: "Their Lordships have observed with regret and with surprise that the general principles and the specific statutory provisions had not been followed. The verdict of the High Court is an inferential verdict—nonetheless sweeping on that account—but an inferential verdict actually of perjury." The Privy Council quoted the following passage from Justice Chandavarkar's judgment:

> "The question here is difficult. She was indeed willing to adopt. But was she a free agent when she adopted the fourth plaintiff, assuming that she had adopted him; or was she forced into it against her will by unconscientious means used by the first two plaintiffs, i.e., Tilak and Khaparde, and unfair advantage taken by them of her ignorance and youth, and of other fiduciary relation between them."

The Privy Council then observed:

> "With much respect to the learned judge, it is, notwithstanding the protracted arguments before their Lordships, even now somewhat difficult to gather what are the legal categories under which the attack upon this transaction is made. Unconscientious means are mentioned and unfair advantage is mentioned. It is needless to ask whether this implies fraud because their Lordships are of opinion that no sort of unconscientious means was employed by these trustees from beginning to end of this transaction and that no unfair advantage was either taken or meant, throughout the

whole course. It is true that the adoptive mother was a young widow, probably easily guided, and that the trustees are admitted to have been men of great influence and strong personality, but Their Lordships are of opinion that these were used in no respect unduly, but with propriety and entirely in the interests of the proper administration of the estate. Their Lordships cannot approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. If it were so, then the result in India would be to import *pro tanto* a disqualification and disability into the position of reputable men."

KESHAVJI ISSAR vs. G. I. P. RAILWAY

The plaintiff sued the G.I.P. Railway for damages for injuries sustained by him through the negligence of the railway. His case was that he travelled from Bombay to Sion and that at the Sion Station, the train overshot the platform, that at the spot where the train stopped it was dark and no warning was given that the train had passed the platform and so in descending he fell heavily and was seriously injured and disabled from attending to business for a long time. The trial judge, Justice Tyabji held in favour of the plaintiff and awarded damages.

Subsequently the defendant railway applied for a review of the judgment on the ground that since the trial the defendant had discovered new and important evidence but Justice Tyabji rejected the application. The Railway Company appealed and made an application for permission to examine one witness. The Appeal Court consisting of Chief Justice Jenkins and another Judge granted the application and ordered that "further evidence" be taken. Several witnesses were accordingly examined in the Appeal Court. Then the Appeal Court decided that they should visit the scene of the accident under conditions approximating as closely as possible to those which prevailed when the plaintiff met with his injury. Accordingly one evening

40 minutes after sunset (at which time the conditions were thought to be as nearly possible like those obtaining at the time of the accident) the Court along with the legal advisers of the parties visited Sion Station and there they sat in the same carriage in which the plaintiff was travelling at the time of the accident and made a thorough investigation of the material conditions accompanying the accident. Having done this, the judges came to the conclusion that the accident must be attributed to the plaintiff's own carelessness and that the Company was not liable for negligence. On the additional evidence recorded, the Appeal Court declared: "The result may be stated in a single sentence. There is an end to the possibility of relying upon the plaintiff's testimony." The plaintiff appealed to the Privy Council.

The Privy Council strongly criticised the action of the Appeal Court in admitting additional evidence and said: "The Appeal Court had no jurisdiction to admit this evidence, it was wrongly admitted and does not form part of the evidence in this appeal." Commenting on the action of the Appeal Court Judges in visiting the scene of the accident under what they called conditions approximating as closely as possible to those which prevailed when the plaintiff met with his injury, the Privy Council observed that the case was decided by the Appeal Court not on the testimony given at the trial as to what took place on the night of the accident but by the judges' observation of what they saw on another night altogether. Their Lordships found it impossible to admit the legitimacy of such procedure or the soundness of such conclusions. In the end, they reversed the judgment of the Appeal Court with costs and restored the judgment of Justice Tyabji. The respondents were also made to pay the cost of the Appeal.

FERNANDES vs. COL. WRAY

At the beginning of 1900 there was a banquet at Kolhapur given by the Maharaja of Kolhapur at which Col. Wray,

the Political Agent was present. Soon after the banquet, it was alleged that poison had been put by some one into either the drinks or some food and that this was aimed at Col. Wray. Fernandes who had looked after the catering was suspected and he was arrested and tried but was ultimately acquitted. Col. Wray took furlough and he left Kolhapur on March 6, 1900. He vacated the government bungalow that he was occupying at Kolhapur and sold his furniture before leaving. He arrived in Bombay on March 7, 1900 and was residing with a friend at Malabar Hill, having planned to sail for England on March 10. On March 8 Fernandes presented a plaint to Mr. Justice Russell to recover Rs. 10,000 as damages from Col. Wray for his wrongful acts in getting him arrested and prosecuted at Kolhapur. Mr. Justice Russell rejected the plaint on the ground of want of jurisdiction.

Against this order, an appeal was filed on the same day and notice of appeal was served on Col. Wray in Bombay on March 9. On March 10, Col. Wray sailed for England. The appeal was heard on December 7, 1900 by Chief Justice Jenkins and Justice Tyabji. The question before them was whether the fact of Col. Wray having abandoned his residence at Kolhapur and being in Bombay for a period of four days was sufficient to satisfy Clause 12 of the Letters Patent so as to give jurisdiction to the High Court to entertain the suit. Both the learned Judges held that as Col. Wray had no residence at Kolhapur or anywhere else and was in Bombay, the Court had jurisdiction. On that, the summons was served in the ordinary course on Col. Wray. Later on, the plaintiff applied for an issue of commission to the then Political Agent in Kolhapur for the examination of certain witnesses. This was granted but Government declined to ask the Political Agent to execute the commission. On that there was tension between the High Court and Government. Ultimately, the suit was amicably settled.

"*CHAMPION*" *CASE*

In 1900 W. A. Chambers, a leading architect who was the Editor of the Weekly paper *Champion* which was supporting the Congress politics of those days, filed a suit for libel against Kabraji, the Editor of *Rast Goftar* for certain observations made in *Rast Goftar* against *Champion* and its editor. Revett, Carnack and myself appeared for Chambers. The case was heard for several days before Mr. Justice Tyabji and he decided in favour of the plaintiff. In the course of his judgment, Tyabji held that the attack made by *Rast Goftar* was defamatory, and he spoke highly of the Congress and said that he considered it the highest honour conferred upon him when he was chosen to preside over the Congress session in Madras.

After the plaint in this case was filed and before the case came on for hearing, Wacha who was the Bombay correspondent of the paper *Madras Standard* in his weekly letter referred to this case and characterised *Rast Goftar* as "a moral plague." He also commented on the merits of the case. On that, proceedings in contempt of court were taken against Wacha. The matter was heard by Justice Russell, Scott, Pherozeshah and myself appeared for Wacha. The judge imposed a fine of Rs. 300 on Wacha.

Some time after the *Champion* case was decided, Wacha again wrote about the case and said that Bhavnagaree was behind Kabraji in the defamation suit of Chambers against Kabraji and had himself paid the costs of the suit. On this Bhavnagaree filed a suit for defamation against Wacha. The suit came on for hearing before Justice Starling. Scott, Pherozeshah and myself were counsel for Wacha. But as Scott and Pherozeshah were attending the Legislative Council when the suit was called on, I was in charge of the case that day. The hearing was, however, adjourned and through the intervention of friends it was referred to the arbitration of Sir Narayen Chandavarkar who was then a judge. Several hearings took

place before Chandavarkar in the course of which the cheque given by Bhavnagaree for payment of the costs in the *Champion* suit was produced from the Bank. The result was that Bhavnagaree's suit was dismissed by the Arbitrator.

MOOLJI JETHA LITIGATION

The Moolji Jetha litigation went on for many years. One great good that came out of it was the establishment by the Municipal Corporation of Bombay of the Govardhandas Soonderdas Medical College and the manning of that institution as well as the K.E.M. Hospital, entirely by Indian personnel. How that came about is stated in the Part "Municipal Corporation."

Moolji Jetha, a Bhatia, came to Bombay in the forties of the 19th century and established widespread business and amassed great wealth. The Moolji Jetha Market in Bombay was established by him. He had a son called Soonderdas. Soonderdas had two sons, Dharamsy and Gordhandas. Gordhandas was born in December 1874. Dharamsy had a son called Karsondas. Moolji Jetha had made a Trust Deed on October 17, 1872. He had also left a Will dated October 17, 1872 and he died in 1889. Soonderdas died in January 1875 leaving a Will giving to both his sons an equal share. Dharamsy died in 1889 and he also left a Will whereby he claimed that the properties comprised in the Trust of Moolji Jetha as well as in his Will belonged exclusively to him. It was contended that as Gordhandas was born after the respective dates of the trust and the Will he could not take under them and the whole of the trust property passed to Dharamsy as he was born before the date of the trust.

In 1899 Gordhandas filed a suit to have it declared that the Trust wholly failed as the one of the beneficiaries was not born at its date and also that the Will of Dharamsy had no effect. Karsondas, son of Dharamsy, who was then a

minor was made a defendant. Sir Griffith Evans from Calcutta, Davar and myself appeared for Karsondas. In 1901, Justice Russell decided in favour of Gordhandas and held that the Trust failed entirely. Justice Russell ordered that the costs of all parties should come out of the estate provided that the guardians of Karsondas did not file an appeal.

Karsondas on attaining majority tried to file an appeal and prayed for excuse of delay but the application was refused. Gordhandas died in 1902 leaving a Will. He also executed a Deed of Poll of the same date. By these documents, he directed his business to be continued by his executors one of whom was Jamshedji Patel, his Solicitor, a partner in the firm of Manshuklal Damodar and Jamshedji. He provided that in addition to the solicitors' firm getting all their costs for work that they may do for the estate, Jamshedji was to get a remuneration of one per cent on the income of his estate. Gordhandas by these documents gave his widow an authority to adopt a particular boy.

Bhagvandas who was a partner of Gordhandas in the firm filed a caveat to the petition for probate. It was contended on his behalf that the Will which consisted of 40 pages was in the English language with which the testator was not familiar and there was no evidence to show that the testator had understood the various provisions of the Will. Starling, Pherozeshah Mehta and myself appeared for Bhagvandas. Justice Russell granted probate. This Will was attested by Jamshedji himself and one of his clerks. On appeal, the Appeal Court excluded from probate the clause about the personal remuneration of Jamshedji. The executors appealed to the Privy Council who restored the decree of Justice Russell. The Privy Council observed:—

> "Jamshedji by the course he took, has brought this litigation on himself but after all the question is one to be decided on consideration of the whole evidence and the circumstances of the case."

Karsondas Dharamsy filed various suits against the executors and trustees of Gordhandas Soonderdas and Chaturbhuj Gordhandas, the adopted son of Gordhandas, but failed in all of them.

One morning Shet Naranji Dwarkadas who was at the time a leading industrialist in the Bhatia community came to me and told me that Lalji Naranji brother of the widow of Gordhandas wished to see me for the purpose of bringing about an amicable settlement between the two branches of the family irrespective of their legal rights as a result of the various suits. I had at that time a very strong prejudice against Lalji because of the evidence he had given in the probate proceedings on Gordhandas' Will. I therefore told Naranji that I did not care to see Lalji. Naranji Dwarkadas, however, ultimately persuaded me to hear what Lalji had to say. Lalji came to me and he impressed me by the way in which he assured me that whatever the legal position created, his great desire was that the two branches of the Moolji Jetha family should make up with each other and act harmoniously and that the parties should agree to leave the whole matter to my arbitration.

I told Lalji to consult his lawyers about his idea of appointing the counsel on the other side as arbitrator. He came to me some days afterwards and said that both Scott and Lowndes who were their lawyers welcomed the idea of a settlement. In October 19, 1908, the parties signed a submission paper appointing me sole arbitrator to settle all matters between the parties. It was expressly provided that the parties waived all legal technicalities, bars and other positions created by reason of litigation determined or pending and it was further stipulated that I was at perfect liberty to determine what in my absolute discretion I considered fair and equitable between the parties. It was also arranged that the parties should appear in person before me and that no lawyers were to represent them.

The arbitration was conducted in a very friendly spirit and everything was settled finally to the satisfaction of both parties sometime in 1910. Chaturbhuj Gordhandas on the conclusion of the arbitration wrote to me as follows:

> "Please accept our best thanks for the fairness and impartiality shown by you while settling some difficult questions to the entire satisfaction of both the parties."

My fees as arbitrator were fixed in the reference paper at a substantial figure. This at the time created jealousy in some quarters. One Judge so far forgot himself as to make reference to it in a vicious manner in a suit before him. I was appearing on one side in the case and this award was incidentally referred to in the proceedings. The learned Judge said: "Is that the award in which the arbitrator got a fat fee and the parties settled between themselves after a few sittings?" I replied "Your Lordship is much mistaken; those arbitration proceedings lasted for more than two years and the arbitrator was not as lucky as another arbitrator who got his fee of Rs. 20,000 after holding no more than two sittings as the parties at that stage settled between themselves and the arbitrator had nothing further to do." The arbitrator I referred to was the Judge himself when he was at the Bar.

I remember how one arbitrator took one lakh of rupees as his fee under very peculiar circumstances. The partners in a firm had fallen out and had gone to court. Then they referred their disputes to an arbitrator and he was also asked to wind up the partnership and determine the monetary obligations of the partners *inter se*. The parties had previously got the arbitrator appointed receiver of the assets of the firm and he was in possession of the assets as such receiver at the date of his award. In the award, he put down his remuneration as arbitrator at one lakh of rupees and in his capacity as receiver, paid this amount to himself as arbitrator. The fee was out of

all proportion and ordinarily it would have been open to the parties to go to court to have a reasonable remuneration fixed for the arbitration as the amount of remuneration had not been fixed in the reference to arbitration.

The arbitrator, however, was too clever for them. In his award, he had stated that the firm had kept two sets of books, one for income-tax purposes and another showing the real profits of the firm and that he had made up the accounts of the firm on the footing of the books showing the genuine state of affairs. With this statement in the Award, the parties could not venture to go to court as they would have rendered themselves open to criminal proceedings for keeping false accounts to deceive the income-tax authorities.

THE CAUCUS CASE

In 1907 the general elections to the Bombay Municipal Corporation were to take place. At that time, one of the constituencies was that of the Justices of Peace for the town and island of Bombay They had to return 16 members. Sir Pherozeshah Mehta was consistently returned for many years by that constituency. Pherozeshah had by his services both inside and outside the Corporation acquired a commanding position in the deliberations of the Corporation. Some European members as well as the then Municipal Commissioner, Mr. Sheppard, formed a clique which was in those days called the 'caucus' to defeat Pherozeshah at the polls. Harrison, the Accountant-General, Gell, the Police Commissioner and Lovat Fraser, the then Editor of *The Times of India* took a leading and active part in the campaign. Mr. Lowndes, who was then at the Bar, canvassed busily among the lawyers to secure support for the 'caucus' candidates. I knew that Mr. Inverarity who had great regard for Pherozeshah was unwilling to vote against him but he was ultimately persuaded to join in the campaign.

The Justices' constituency consisted of men who were all nominated to that Office by Government and a very large number of them were Europeans. The 'caucus' organisers made a ticket of 16 persons whom they recommended for election by the Justices and the Justices were exhorted to vote for that ticket from which Pherozeshah was, of course, excluded. For many days, great excitement prevailed in the city and there was deep public resentment in Bombay, as also in many other parts of the presidency at the activities of the 'caucus.' Their attempt to oust Pherozeshah who was the builder of the Bombay Municipal Corporation's constitution and who had guided that body to a high level of efficiency and prestige was condemned. The following were the 16 names put forward by the 'caucus':—

H. R. Greaves
D. M. Silva
Haji Yusuf Haji Ismail
R. T. Nariman
Gulamhussein K. Ebrahim
Jamshedji A. Wadia
James MacDonald
Cowasji Jehangir Readymoney
N. V. Mandlik
Phiroze C. Sethna
Mahomed Hajibhai Lalji
Dinanath B. N. Dandekar
Jehangir R. Dubash
Shek Ibrahim Hafiz
D. B. Petit
Vasantrao A. Dabholker

The poll was taken in the Municipal Hall on February 21, 1907 at a meeting of the Justices when the Municipal Commissioner, Sheppard presided. When the meeting began, I raised a point of order that the election that was being held was illegal on the ground that the Municipal Commissioner had altered the date of the election which he had once notified and that it was not competent

for him to do so. Sheppard overruled my objection. The result was declared the next day and 14 out of the 16 'caucus' ticket candidates succeeded and Pherozeshah Mehta stood seventeenth. Public indignation on the declaration of the result was very great.

The organisers of the 'caucus' had aimed at diminishing the authority and prestige of Pherozeshah but their action had the contrary effect of very much enhancing his popularity and influence on the public mind. The 16th person who got in, was Suleman Abdul Wahed of Ladha Ibrahim & Co., who had contracts with the Municipal Corporation and was, therefore, under the Municipal Act, disqualified from being a Councillor. A petition was presented to the Chief Judge of the Small Causes Court to declare that he was disqualified from being a Councillor. The Chief Judge held that Suleman Abdul Wahed was disqualified and Pherozeshah Mehta who stood 17th got automatically elected to the Corporation.

Bhaishankar Nanabhai who was a sitting member of the Corporation and Senior partner in the solicitors' firm of Messrs. Bhaishankar Kanga and Girdharlal filed a suit against the Municipal Corporation of Bombay, the Municipal Commissioner and the 16 persons who were elected Councillors at the J.P.'s election to have it declared that the election was void and that the sitting Councillors may be declared as automatically continuing to be members under one of the provisions of the Act. The main ground was that the Municipal Commissioner having fixed the J. P.'s election to take place on February 13, the polling should have taken place a week later on February 20, but the Municipal Commissioner altered the dates to the 14th and 21st of February respectively. It was contended that the Municipal Commissioner having once fixed the dates had no power to alter them and that the polling not having taken place on February 20, the election held on February 21, was no election at all.

I appeared with the late P. J. Padshah for Bhaishankar, Inverarity, Scott and Lowndes appeared for the Municipal Commissioner and the Corporation. Among the issues raised by Inverarity, there was one which challenged the jurisdiction of the Court to try the suit. The suit was heard by a special Bench consisting of Sir Lawrence Jenkins, the Chief Justice, and Justice Batty. In order to be able to decide the question of jurisdiction properly, the Court went into all the issues that were raised in the case. They however, ultimately decided the suit on the question of jurisdiction and held that as the right that the plaintiff was claiming, *viz.*, to have it declared that he continued to be a Councillor, was a creature of the Municipal Act which again provided the remedy of an appeal to the Chief Judge of the Small Causes Court, the plaintiff must go to that tribunal. The suit was therefore dismissed.

The hearing of the case created great interest and the Court was crowded by members of the legal profession as well as by the public. In delivering judgment, Sir Lawrence Jenkins complimented me by saying that I argued the case "with considerable skill and resource." The next day after the judgment was delivered the Chief Justice sent for me in his Chamber. Justice Batty was also there. The Chief Justice then told me that he and Justice Batty felt that they could not allow this opportunity to pass without communicating to me personally their high appreciation of the manner in which I conducted the case. He added "Mr. Inverarity if he had appeared on your side, could not have done better."

A Petition was filed in the Small Causes Court by Sir Balchandra Krishna, Mr. Hormusji A. Wadia and Mr. Jehangir B. Petit to set aside the election on the ground of its not having been a free and fair one and on account of the form of the voting papers etc. The case was heard by the Chief Judge, Rustomji Patel and his successor Mr. N. W. Kemp. Jinnah appeared for the peitioners. Some inci-

dents were witnessed, some damaging disclosures were made and some Justices had to look foolish. In the result, the Chief Judge upheld the election. A representation was thereafter made to Government by Gokuldas Parekh, H. S. Dikshit and myself pointing out the gross impropriety of official interference in the election but it met with no better fate. A mass meeting was held at Madhav Bag on April 7, 1907 presided over by G. K. Gokhale to give expression to the universal feeling of condemnation of the unconstitutional action of Government officials and a memorial was drafted to the Viceroy praying for enquiry into the affair. The Indian Government's reply to the memorial was that the matter was fully investigated by the Law Courts and they had no orders to pass in connection with the prayers of the Memorialists.

SUITS AGAINST AGA KHAN

In the year 1908, one Haji Bibi, a member of the Aga Khan's family, filed a suit against him claiming that all the offerings and presents that he got from his followers were for the benefit not of himself alone but of all members of the family. Bahadurji, myself and Bhulabhai Desai appeared for the plaintiff and Inverarity appeared for the Aga Khan. The suit went on for many days and 128 issues were raised. For a considerable time Bahadurji conducted the case. Later, he left the case to Bhulabhai Desai. I never attended except once to argue a point of law. In those days counsel in the case who did not attend at the hearing was paid 2 G.Ms. (30 rupees) for each hearing by way of what was called "nominal refresher." The time occupied in the hearing of the case may be judged from the fact that though I never attended except on one occasion, I got by way of these nominal refreshers something like Rs. 2,500. At a later stage in the case, Bhulabhai also withdrew under the following circumstances and thereafter there was no appearance for the plaintiff.

During the progress of the trial, the Judge was told that if questions were put to the witnesses in Court, similar to those put to witnesses examined on Commission and if such questions and answers were published in the newspapers, there would probably be an outburst of violence between the Muslim communities in Bombay. When the Aga Khan was being cross-examined, a question was put to him which the Judge thought was calculated to cause excitement and animosity. The Judge said so to the counsel who was cross-examining the Aga Khan but the counsel insisted on putting the question and the Aga Khan answered it. The Judge then intimated that if similar questions were to be put, he would clear the court. The next question being of the same character the Judge ordered the court which was then crowded with Muslims to be cleared. While the court was being cleared, the Judge asked counsel for the plaintiff and counsel for the Aga Khan to come up to him and he explained to them the reasons for ordering the court to be cleared. After the court was cleared, the plaintiff's counsel intimated that under the circumstances, he had instructions not to proceed with the case.

Ordinarily in the absence of the plaintiff, the hearing would have stopped there and the suit would have been dismissed. Inverarity contended that the plaintiff by withdrawing could not deprive the defendant of the judgment to which he was entitled and that the Court should deliver judgment on the materials before it. Russell accepted this position and gave judgment in the Aga Khan's favour holding that all offerings were made to him personally and that the other members of the family were not entitled to their benefit. In his judgment, Justice Russell highly complimented Inverarity for his able conduct of the case and also Moos, the solicitor instructing him for the great skill with which he had prepared the case and had examined the witnesses on commission.

In 1930 I appeared for the Aga Khan in a suit filed against him by some members of his *jamat* at Karachi for a declaration that the Jamatkhana and other properties in Karachi held by the Aga Khan did not belong to him personally as he claimed, but were the properties of the Jamat. The case was to be heard by the Judicial Commissioner's Court. I had to go to Karachi more than once for this case.

Before I went to Karachi for the final hearing, the solicitors of the Aga Khan had a conference with me, and the late Dinsha Mulla and we laid down the lines on which the case was to be put before the court. There were several points arising and we came to the conclusion that there was nothing in one of them and that we should not argue it. The case lasted for several days. In consultation with the pleaders at Karachi, I intimated to them my own and Mulla's view about that particular point and they agreed. When I had finished arguing all the points we had decided to urge, I turned to the Karachi pleader and asked him whether we stuck to our view not to press that particular point. He said "Why not put it? Nothing will be lost." So I urged that point also and to our surprise when judgment came, we won the case mainly on that point.

This reminds me of what Sir Lawrence Jenkins once jocularly said about Sir Charles Paul who was Advocate-General at Calcutta. He used to press every point, good, bad or indifferent. Jenkins asked him once why he was doing so. His answer to Jenkins was: "You never know when you catch the fool sitting up there," meaning the judge.

MOTILAL SHIVLAL vs. BOMBAY COTTON MFG. CO.

In April 1910, Motilal Shivlal, a rich Hyderabad banker whose affairs in Bombay were managed by one Dani sued the Bombay Cotton Manufacturing Co., for two lakhs of rupees being the sum standing in the books of the company as due to him. The defence was that the defendant com-

pany did not owe anything to the plaintiff and that the entries in its books were the result of a fraudulent arrangement between Dani and the persons in charge of the management of the three companies, Bombay Cotton, Tricumdas Mills and Luxmidas Mills, whereby the indebtedness of Tricumdas Mills and Luxmidas Khimji Mills which were insolvent was transferred to the Bombay Cotton Manufacturing Company, and that no money had really passed from Motilal Shivlal to the Bombay Cotton Mills.

The case was heard by Justice Beaman. I appeared for the plaintiff, Motilal Shivlal. Dani, the *munim* of the plaintiff, was the principal witness on his behalf and in order to shake his credit, he was severely cross-examined with regard to certain alleged falsifications of accounts and balance sheets of the Tricumdas Mills of which he was a Director. Justice Beaman disbelieved Dani's evidence and held that the transaction on which the suit was based was fraudulent. With regard to the two witnesses, Devji and Tricumdas Dwarkadas, called for the defence, the judge relied on their evidence and said, "Very seldom indeed has a party in these courts such serviceable, clear-headed and as it appears to me, absolutely truthful witnesses as these two boys to offer in respect of its case."

Motilal Shivlal appealed and the Appeal Court (Chief Justice Scott and Justice Russell) reversed Justice Beaman's judgment. Scott remarked in his judgment that the cross-examination of Dani with regard to the fraudulent nature of a balance sheet not connected with the matter in dispute, placed him in an uncomfortable position, and reduced him to shuffling answers but it did not affect the story of the events in dispute, and that his evidence with regard to that was straightforward and convincing. On appeal to the Privy Council, that tribunal reversed the appeal court judgment and restored the judgment of Beaman. They took strong exception to the observation of Scott that the cross-examination of Dani which convicted

him of being a party to a false and fraudulent balance sheet of Tricumdas Company was not a very relevant point. The Privy Council said:

> "The observation might be of disastrous effect if accepted. Cross-examination to credit is necessarily irrelevant to any issue in the action; its relevancy consists of being addressed to the credit or discredit of the witnesses in the box so as to show that his evidence for or against the relevant issue is untrustworthy. It is most relevant in a case like the present where everything depends on the Judge's belief or disbelief in the witness' story, and to excuse him and actually accept his story on the ground that he was uncomfortable when he was shown to be a fraudulent falsificator of accounts is to adopt a course which Their Lordships cannot follow."

GOLDEN GANG CASE

A young Bhatia came into a large fortune from his adoptive father. Certain people entered into a conspiracy to relieve him of some part of his inheritance. They executed the following scheme. One of them bought a piece of land at Malabar Hill for a certain amount. He then, after the expiry of a short time, purported to sell the land to one of his associates for a considerably enhanced price. After another interval, this purchaser purported to sell the same land at an enhanced price to another associate and so on. By reason of these fictitious sales, the conveyance to the last associate purchaser showed a heavy price.

The last associate offered the land to this young heir and sold it to him for a further enhanced price. The young purchaser paid a certain amount towards the purchase price and gave a promissory note for the balance which was substantial. Then the member of this gang who was the vendor to the young man filed a short cause suit on this promissory note. I was briefed for the plantiff. Neither I

nor the attorneys had any knowledge of the previous bogus transactions. We took it as an ordinary simple suit on a promissory note. The suit appeared on the board of Justice Chandavarkar and when it was called on, counsel appeared for the defendant and asked for an adjournment to enable the defendant to put in a written statement and to contest the suit as it was a fraudulent transaction. The judge granted the adjournment. When the written statement was filed, it related the whole story. In the result, Chandavarkar after protracted hearing in which the whole fraud was exposed, dismissed the suit and if I remember rightly granted the counter-claim of the defendant for return of the moneys already paid. In his judgment, he characterised those associates in frauds "a Golden Gang."

INDIAN SPECIE BANK

Chunilal Saraya who had qualified as a Doctor having taken the L.M. & S. degree of the Bombay University and whom I knew from my College days had ambitions in the sphere of finance. Instead of practising the medical profession, he joined the Bank of Bombay as Assistant Shroff. He proved a very efficient officer in the banking line. He however, had great attraction for speculation and he plunged into it from time to time. As the authorities of the Bank disapproved of this he retired and got a pension as he had put in 17 years' service. Later he took part in promoting the Bank of India and it was contemplated that he would be its first Manager. Through some disagreement, however, between the chief promoters and Chunilal, he did not join the Bank.

He then promoted the Indian Specie Bank which went on for some years. It was said that Chunilal's speculative instinct had led him to corner silver on behalf of the Bank. The bazar was thick with rumours about this and a petition for winding up the Bank was presented to the High Court on the ground mainly that the Bank had

largely speculated in silver involving heavy loss and that the substratum of the Bank had gone.

I appeared for the Bank to oppose the petition. During consultation I asked Chunilal to let me know what the real facts were, and he swore that the Bank did not own any silver at all. At the hearing of the petition before Justice Davar, I stated on instructions that the Bank did not own an ounce of silver. The petition was dismissed and Chunilal got a big ovation in the market. The real fact as it later transpired, was that the Bank had in fact bought large quantities of silver but in the accounts, it was shown that one Nanabhai who turned out to be a man of straw, had purchased all that silver and the Bank had financed him and the silver was pledged to the Bank and was in the Bank's possession. This was merely a camouflage but Chunilal was technically right on the face of the books when he said that the Bank did not own an ounce of silver. He had cornered this silver expecting that prices would go up and the Bank would make a huge profit. The Government of India, however, released a considerable quantity of silver for sale in the market with the result that the prices tumbled down and the Bank was a heavy loser.

A second petition for winding up was presented and the court ordered the Bank to be wound up. Within a few days Chunilal died suddenly at his residence at Bandra and it was generally believed at the time that he had committed suicide. With the crash of the Bank, the Directors came into trouble and proceedings for misfeasance were started against them. These proceedings lasted for a considerable time in the High Court.

X vs. X

Mr. X was a high officer of Government. Mrs. X filed a petition for divorce against him on the ground of adultery. The matter was heard by Justice Davar in camera in his Chamber. The evidence in support of the alle-

gation of adultery was that of a solicitor's clerk who had watched Mr. X going into a brothel and remaining inside for sometime. There was no appearance for the defence. A decree *nisi* was passed. Subsequently, under the instructions of Government, the Advocate-General intervened as the King's Proctor does in England and charged that the divorce proceedings were collusive and several affidavits in support of that allegation were filed. Some time afterwards, however, the Advocate-General withdrew his opposition.

The case appeared on board for decree absolute before Davar and I was briefed for the petitioner. As the Advocate-General's opposition had been withdrawn, I thought that the decree absolute would follow as a matter of course and that no further argument was needed. I was engaged that morning in the Appeal Court and so I asked Bhulabhai Desai to hold my brief before Davar and to obtain the decree absolute. On the matter being called on, Bhulabhai stated that there was no opposition and that the decree absolute should be passed. The judge, however, said that Government might withdraw their opposition but the affidavits on which they relied were on record and it was for him to decide whether the decree should be made absolute. On that Bhulabhai asked for an adjournment which was granted. At the adjourned hearing, I appeared and after some discussion, His Lordship granted the decree absolute. This was the only instance in which Government intervened in divorce proceedings.

ZORASTRIAN CONVERT'S CASE

In the year 1914 there was great controversy in the Parsi community over the rights of certain persons (originally belonging to other sects and religions who had become converts to the Zorastrian religion) to the benefit of the funds and institutions held by certain trustees for the benefit of the Parsi community. The controversy arose under the following circumstances.

Mr. R. D. Tata of the Tata family married a French lady and she was converted to Zorastrianism by appropriate rights. There was another lady, a Rajput, who had also been similarly converted. The question arose whether these converts were entitled to participate as Zorastrians in the benefit of certain trusts and particularly the Towers of Silence and the Godavia Agyari. The trustees had notified that they would not allow the two ladies to participate in the benefits of the funds and institutions under their management. In order to get this question decided, a suit was filed by Sir Dinshaw Petit and others, among them being Mr. R. D. Tata, against Sir Jamshetji Jeejeebhoy and the other trustees of the funds and properties of the Parsi Panchayet. The object of the suit was to have it declared that the Zorastrian religion allowed conversion and that the funds and properties in the hands of the trustees were endowed for all Zorastrians and that, therefore, converts were entitled to the benefits of those funds and properties including the Towers of Silence and Godavia Agyari. There was also a prayer for declaration that the defendants were not validly appointed trustees.

A Special Bench consisting of Justices Davar and Beaman was constituted to hear the suit which went on for many days. The court held on the main issue that as the plaintiffs had not been denied the benefits of the trust property, and the two ladies who had been denied such benefit not having joined as plaintiffs, it was not competent to the plaintiffs to sue and that any decision given by the court would not bind those two ladies. Curiously enough, however, the court proceeded to decide the main issue in the suit and held that the benefit of the said funds and properties was confined only to Parsi Zorastrians and not to converts.

SURAJMAL vs. HORNIMAN

The *Bombay Chronicle* in its issue of March 15, 1916 published certain articles under the heading "A Solicitor

and his Client—Matter for Investigation." The article referred to the conduct of Surajmal Mehta a solicitor, as appearing in the course of certain litigation and reciting the allegation made against him, said that the Court and the Law Society should enquire into the matter. Surajmal thereupon filed a libel suit against Horniman, the editor of the *Bombay Chronicle.*

The suit was heard by Justice Macleod. Bahadurji and myself appeared for Horniman and Strangman for Surajmal. Macleod decided in favour of Surajmal and gave a decree for Rs. 3,000 and costs against Horniman. Horniman filed an appeal which was heard by Chief Justice Scott and Justice Heaton. I argued the appeal for Horniman, and Strangman appeared for Surajmal. The appeal lasted for several days and excited great public interest. The two judges differed in their opinion, Scott holding that what had appeared in the *Chronicle* was fair and honest comment on a matter of public importance, while Heaton held that the comments were not fair. When the differing judgments were delivered Scott said that the matter would be referred to a third judge for final decision. I objected to this and urged that under clause 16 of the Letters Patent, when the judges differed in a matter arising on the Original Side of the High Court, the opinion of the senior judge must prevail.

A day was fixed for arguing the point and Strangman and I argued the question on opposite sides. Both Scott and Heaton held in my favour with the result that Scott's opinion prevailed and Surajmal's suit was dismissed, the court in view of the difference of opinion making no order as to costs. Surajmal appealed under the Letters Patent against this decision and the appeal was heard by a full bench consisting of Justices Batchelor, Beaman and Marten I appeared for Horniman, and Strangman for Surajmal. The appeal was argued at considerable length and the court

reserved judgment. In the end, concurring judgments were delivered upholding the view of Scott that the article in the *Chronicle* was a fair and honest comment on a matter of public importance and the suit was dismissed. Surajmal was made to pay the costs of Horniman throughout.

SHIVLAL MOTILAL LITIGATION

The Shivlal Motilal family whose original home was Nagore, a small village in Jodhpur State, migrated to Hyderabad, where it developed large business and amassed great wealth. The business was carried on in the name of Shivlal Motilal at Hyderabad and Bombay. Motilal died in June 1917 leaving behind his adopted son Bansilal and Bansilal's five sons, the eldest of them being Govindlal. The relations between Motilal and his adopted son Bansilal were very strained and it is said that Motilal had openly told Bansilal, that he, Motilal, wished and prayed that Bansilal in his turn got from his son the same sort of treatment that Bansilal had been giving to his father. Motilal left a Will whereof he appointed his grandson, Govindlal, the sole executor and trustee, and gave the bulk of the property to his grandsons. The property left by him was estimated at about Rs. 10 crores.

In July 1917, Govindlal filed a suit in the High Court of Bombay against his father Bansilal and his other brothers in which he propounded the Will of Motilal. On the same day, Bansilal filed a suit against Govindlal and his other sons for a declaration that all the properties in the hands of Motilal Shivlal at his death were ancestral joint family properties and at the death of Motilal, these properties passed by survivorship to Bansilal and his sons and grandsons. He contended that the will executed by Motilal Shivlal was null and void and inoperative, so far as the ancestral joint properties were concerned, and sued for partition of the same. He also submitted that his wife Budribai was entitled to a share on such partition.

In both suits, applications were made for the appointment of a Receiver of the property. Govindlal contended that he should be appointed Receiver and in support filed affidavits from well-known citizens of Bombay testifying to his fitness. Bansilal pressed for the appointment of the Official Receiver and Justice Marten appointed R. D. Sethna, the then Official Receiver, as Receiver of properties in British India, and by consent of parties, also of the Hyderabad property. The Receiver accordingly went to Hyderabad but he was prevented by the Hyderabad authorities from taking possession. The Nizam's Government declined to allow any order of the High Court of Bombay to be carried out within Hyderabad jurisdiction. On an application to the Bombay High Court, Justice Kajiji and in appeal Chief Justice Scott and Justice Macleod upheld the view of the Hyderabad Government. The Appeal Court suggested that the Receiver should file a suit against the parties in the Hyderabad Court and ask that he himself should be appointed Receiver by the Hyderabad Court. The Receiver accordingly filed a suit in the Hyderabad High Court to which Budribai was made a defendant along with all the parties in the Bombay suit, but the judge who heard it dismissed the case on the ground that the Bombay High Court had no jurisdiction to appoint a Receiver of Hyderabad, property.

An appeal was filed in the Hyderabad High Court by the Receiver. Mr. Mulla appeared for the Receiver and I appeared for Budribai instructed by Mr. Romer of Messrs. Merwanji Cola & Co.

When I reached Hyderabad, Mulla who was appearing on the other side met me and said that the Judges had intimated that the appeal would not be heard then as the Judges were going to sit on some Commission. I and Mulla then saw the Chief Justice and he referred us to the Judicial Secretary. Ultimately, it was arranged that the Court consisting of the Chief Justice and two other

Judges would hear our appeal in the afternoon and they would sit on the Commission in the forenoon. The hearing of the appeal lasted several days. We discovered that one of the Judges did not know English and I and Mulla were arguing in English citing numerous authorities. The other Judge knew English but during the course of argument, it appeared that he was against us, while the Chief Justice appeared to be in our favour. Ultimately, the Chief Justice and the Judge who did not know English agreeing with him, decided the appeal in our favour.

As regards the question whether Bansilal's wife was entitled to an equal share on partition, a Commission was issued in the Bombay suit to take evidence on custom in Jodhpur State. Ultimately the parties came to a settlement whereby it was declared that all the properties in the hands of Motilal were ancestral joint family properties and his will was void and inoperative in respect of such properties and the same were directed to be divided amongst Bansilal and his five sons in equal shares after first paying Rs. 25 lakhs to Budribai in settlement of her claim.

In this litigation I appeared throughout for Bansilal except at the last stage when I had accepted office as Member of the Executive Council in Bombay.

This litigation lasted for many years and the wish of Motilal that the sons of Bansilal should give Bansilal great annoyance and trouble was fulfilled. Strangely enough Govindlal who had fought his father Bansilal was destined to get the same treatment from his brother and son.

Later disputes arose between Govindlal and his brother Mukundlal on the one hand and between Govindlal and his son Venkatrao on the other and suits were filed in the High Court. These suits were referred to the arbitration of Taraporewala and myself and we made an award which was accepted by the parties concerned.

BHAGCHAND vs. SECRETARY OF STATE FOR INDIA

Serious riots broke out in Malegaon in the Nasik District in April 1921 which resulted in loss of life and destruction of property. The Momins of Malegaon who were alleged to be the actual rioters were a community of weavers in the city who bought yarn from the shopkeepers of the town and after manufacturing saries sold them to the shopkeepers. On July 1, 1921, the Home Department directed the employment of additional police at Malegaon. It was at first ordered that the amount of compensation to be awarded to those who suffered by the riots as well as the cost of the additional police to be quartered at Malegaon, should be recovered mainly from the Muslim population and the Municipality was asked to collect the imposition.

The Municipality declined to undertake the task on the ground that it would be impossible for them to make the collection from the turbulent Muslims. The District Magistrate recommended that as it would be difficult to make recoveries from the Muslim weavers who were very turbulent, the compensation amount and cost of the police should be recovered on behalf of the Muslims from the shopkeepers who purchased saries from the Muslim weavers. In making this recommendation, he observed "The shopkeepers were easily made to collect the Khilafat funds. Let them now be made to collect our compensation." The idea was that the shopkeepers would reimburse themselves by charging more for the yarn they sold to the weavers or in the alternative charge more for the saries they sold to the public.

This was evidently unfair. When the Municipality and Government felt themselves unable to make recovery from the turbulent weavers, it was almost impossible for the shopkeepers to charge the weavers more for the yarn. On the other hand, if they charged their customers more for the saries, when the burden which should have justly fallen on the weavers would be transferred to the comparatively inno-

cent Hindus who bought the saries. Government, however, accepted the proposals of the District Magistrate.

Some of these shopkeepers filed a suit contending that the orders of Government were illegal and prayed for a permanent injunction against the Secretary of State restraining him from recovering the tax. A temporary injunction was sought pending the disposal of the suit. The Court at Nasik rejected the application for injunction. An Appeal was filed in the High Court and a temporary injunction was granted. When the suit came on for hearing before the District Judge at Nasik, the Court held that the notification was not *ultra vires*. The plaintiffs appealed to the High Court. I with G. N. Thakore appeared for the appellants. The contention of the respondents was that the suit was bad as the two months' notice required under Section 80 of the C.P.C. had not been given. The Court held that it was not precluded by reason of section 80 of the C. P. Code from entertaining a suit for injunction against the Secretary of State before the expiration of two months. They considered that if the cause of action required an immediate remedy by way of injunction, the party aggrieved would have no remedy if section 80 were literally applied. The Appeal Court held that inasmuch as the law allowed Government to make the recovery from any persons or class of persons the orders of Government were not *ultra vires* although they may be unfair or oppressive.

The plaintiffs appealed to the Privy Council which held that Government in its administrative discretion could change the incidence of the tax and could impose it on any class of persons without proof of the active complicity of that class in the rioting. They further held that compliance with Section 80 of the Code of Civil Procedure was necessary for a suit either for a declaration or for injunction. This overruled the series of decisions of the Bombay High Court to the effect that regard-

ing suits to restrain by injunction the commission of some official act prejudicial to the plaintiffs (if the immediate result of the act would be to inflict irremediable harm), Section 80 did not compel the plaintiff to wait for two months before bringing the suit. The High Courts of Calcutta, Madras and Allahabad had taken the view held by the Privy Council to be the correct one. The decision of the Privy Council on the point has created a situation of great hardship to the public who are debarred from obtaining the remedy of preventing Government from doing an act which would inflict irremediable harm. This question requires the attention of the legislatures.

WRIT OF HABEAS CORPUS. S. 491 CRIMINAL PROCEDURE CODE

In the year 1925, a Borah father entrusted the custody of three of his minor daughters to the Mullaji Saheb of the Dawoodi Borah community. The girls were taken charge of by Mahomedally Allabux, a trusted follower of the Mullaji Saheb, and two of them were thereafter sent by him to a place in Junagadh State in Kathiawar. The father subsequently made attempts to get back the custody of his daughters and having failed he applied to the High Court for a writ of habeas corpus under Section 491 of the Criminal Procedure Code.

I appeared for the father both before Justice Shah and before the Appeal Court. A rule *nisi* was issued by Justice Shah for the production of the minors. One of the minors was produced before the court and she was ordered to be entrusted to the custody of the father. With regard to the other two, it was urged that they were outside the limits of the appellate jurisdiction of the High Court. The Judge allowed the petition to be amended to the effect that it was a petition not only under Section 491 of the Criminal Procedure Code but also for the exercise of the common law powers of the High Court to issue a writ of

habeas corpus. The rule was discharged against the Mulla-ji Saheb and made absolute against Mahomedally who was ordered to produce in court the two minors who were at Junagadh on a particular day.

Mahomedally appealed against this order. It was contended that the legislature by enacting section 491 of the Civil Procedure Code limited the common law powers which the High Court had with regard to the issue of writs of habeas corpus, and as the minors were not only outside the the limits of the appellate jurisdiction of the High Court but also outside British India, it was not competent for the High Court to issue such writs. The Appeal Court, however, held that the common law powers of the High Court had not been affected by section 491 and that as Mahomedally had still the custody of and control over the minors, though they were out of British India, the Court could order him to produce them.

In a recent case, however, the Privy Council have held that since the enactment of section 491, the common law powers of the High Court in the matter of writs of *habeas corpus* have been circumscribed by the provisions of that Section (99 *I.A.* 222 (236)).

JEHANGIR PETIT vs. THE MUNICIPAL CORPORATION

On April 1, 1927 a meeting of the Bombay Municipal Corporation was held to elect the President for the year beginning on that date. There were four candidates duly nominated viz: J. B. Petit, S. S. Batlivala, Jehangir Boman-Behram and L. R. Tairsee. The retiring President, R. M. Chinoy, was elected Chairman for the meeting. Tairsee withdrew from the contest. In the first ballot, Petit got 36 votes, Batliwala 31 and Boman-Behram 30 votes. Boman-Behram was thus eliminated and in the second ballot, Petit and Batliwala got 49 votes each. So under the rules, the Chairman had to give his casting vote. According to Mr. Chinoy as he felt that both candidates were eminent mem-

bers of the Corporation and had rendered valuable services he found it difficult to make any distinction between them. Accordingly he decided to draw lots and he asked Mrs. Mackenzie, a member of the Corporation, to draw lots and when the lots were drawn and the name of Batliwala came up, he declared him elected.

Petit filed a suit to have the election declared invalid. I appeared for Petit. It was contended by us that the Chairman had not given a valid casting vote because the giving of a casting vote involved the exercise of judgment and that a casting vote given according to the result of the drawing of lots was an election by chance and not by vote and was, therefore, invalid. It was pointed out that in the Municipal Act as well as in certain other enactments, where the legislature wanted the final decision to be by the drawing of lots, it expressly said so while in the section of the Bombay Municipal Act governing this matter, the question had to be decided by the casting vote of the chairman which is different from drawing lots.

In my cross-examination of Chinoy I put him a question and he said 'I do not understand the question. I am not an English scholar.' I said 'I did not suggest you were, but my question is so simple that a school boy can understand it.'

Mr. Justice Blackwell, in his judgment said that the giving of a vote did not necessarily involve the exercise of judgment at all, that it involved merely the expression or intimation of a wish or choice and that such wish or choice might be actuated by mere whim or caprice. He further said that even if the giving of the casting vote did involve the exercise of judgment the Chairman having considered the respective merits of the two candidates and finding himself unable to make a choice between them, he was entitled to assist himself in choosing between them by drawing lots. In the result, the suit was dismissed.

It is difficult to understand or approve the reasoning of the learned Judge when he says (1) that the giving of a casting vote does not involve the exercise of judgment and (2) that the Chairman exercised his judgment by assisting himself by drawing lots.

LANGLEY vs. D'ARCY

Langley was a cotton merchant doing business on a large scale in Bombay. He was very fond of horse racing and kept many race horses. He was a Steward of the Bombay Turf Club. D'Arcy, an Australian, was his trainer. D'Arcy left Langley's service and in a letter written by him to the Stewards of the Turf Club stated that Langley had given him instructions such as prevented him from winning with a majority of his horses at the Poona Races. The Stewards, however, did not attach any importance to D'Arcy's allegations and Langley was re-elected Steward of the Turf Club. D'Arcy then went away to Australia.

Langley asserted that the allegations made by D'Arcy were false and malicious and he filed a suit for damages against D'Arcy for defamation and I was briefed for Langley by Crawford Bailey & Co. In my opinion it was not worth while to file such a suit as nobody had taken the allegation seriously and the man had left the country. D'Arcy in his written statement relied upon certain instructions given orally as well as in writing through correspondence that passed between him and Langley while the latter was in England whereby D'Arcy said he was asked to win with some horses only and not with others in Poona. The suit was heard by Justice Norman Kemp in 1929 and the hearing lasted for about 10 days. I appeared for Langley and Mr. Binning for D'Arcy. In the end, Mr. Justice Kemp awarded to Langley one rupee damages and made no order as to costs.

After that Langley wanted to appeal. I strongly advised him to let the matter rest where it was, for I thought

he might go further and fare worse and so it happened. The appeal was heard by Justice Blackwell and Justice Crump. Mr. Bhulabhai Desai appeared for Langley. The defendant had filed cross-objections. The Court held that the defendant had justified his allegations and set aside the award of one rupee and made Langley bear the costs in both Courts.

A MISER'S WEALTH

Ranchhoddas Tribhuvandas Mody, a Kapole Bania had amassed considerable wealth (Rs. 60 lakhs) by lending moneys at high rates of interest. With all the wealth that he had, he lived in a miserly manner, never entertained friends and never gave anything to deserving charitable objects. A striking instance of his great unwillingness to spend money is illustrated by a story which Mr. S. G. Velinkar vouches for. Mr. Velinkar wanted Ranchhoddas Mody to become a Life Member of the Hindu Gymkhana, the fee for life-membership being a lump payment of Rs. 500. After repeated requests, Mr. Ranchhoddas agreed and asked Mr. Velinkar to come to his house on a Sunday to receive the amount. When Velinkar went there, Mr. Ranchhoddas brought out his cheque book and said "As I promised you, I will give you my cheque for Rs. 500 but I may tell you that when I have given it, I will pass sleepless nights for a fortnight." Velinkar thereupon got up and left saying "I don't want your money."

Ranchhoddas had no children and on his death, he left behind him his widow Putlibai. Most of his investments were in the joint names of himself and his wife Putlibai. He left a Will in favour of his wife. Jugmohandas Kalliandas and his brothers who were his nephews filed a suit for the administration of his estate and a Receiver was appointed. Ultimately a consent decree was taken whereby Putlibai was declared entitled to all the estates left by her husband as well as assets standing in the Joint names of

Ranchhoddas and Putlibai subject to six lakhs of rupees to be paid to the Accountant-General to the credit of charity; certain properties worth about 5 lakhs to be given to Bhagvandas, one of the plaintiffs in the suit who had adopted the name of Ranchhoddas as that of his father though there was no formal adoption; five lakhs of rupees to be paid to Mr. Amritlal Dholkia, the son of Putlibai's brother and some lakhs to be paid to the plaintiffs.

The Court appointed myself, Dewan Bahadur Krishnalal Jhaveri and two other trustees for the amount of Rs. 6 lakhs set apart for charity with liberty to the trustees to dispose of the corpus in such manner as they may deem proper with the sanction of the Advocate-General. Probate of the Will was issued to the executors. Putlibai died in April 1932 before she could realise the estate. She left a will of August 1931 appointing Mr. P. Laud, a solicitor, Amritlal Dholakia and his son Babubhai and one C. M. Desai as executors and nothing was given to Ranchoddas' nephews, but 10 lakhs of rupees were given to Mr. Babubhai, the son of Mr. Dholakia. The executors filed their petition for probate and Jugmohandas Kalliandas and his brothers filed a Caveat and the Court Receiver was appointed administrator *pendente lite.* The Caveators alleged that Putlibai, when she made the will, was not in a sound and disposing state of mind.

I appeared for the executors in support of the will. The evidence of some witnesses for the executors lasted for about 17 days before Justice B. J. Wadia. The executors' evidence would have occupied some days more and then the Caveators' evidence would have taken considerable time. By the time the evidence of Mr. Laud, one of the executors and the solicitor for the executors was nearing an end, I and other Counsel appearing for the executors considered that it was desirable for the executors to come to a settlement. Under the settlement arrived at, various sums were set apart for educational purposes among which

Rs. 2,80,000 were earmarked to be given to the University of Bombay for its Techonological Department, and certain other moneys were ordered to be paid to the Sarvajanik Education Society of Surat for establishing a Science Department in their college. A sum of Rs. 12 lakhs was agreed to be paid to the Caveators and the residue of the estate (after making all the payments and costs of all parties) was to be handed over under the terms of the Will to Babubhai by the executors to whom Probate was issued.

Heavy costs were incurred in this testamentary suit and Messrs. Ardeshir Hormusji Dinshaw & Co., the Solicitors of the Caveators were paid for their costs Rs. 2,50,000. The costs of the executors were also heavy. In the result, all the wealth that Ranchhoddas had accumulated and which he never enjoyed himself got distributed among various charities and people mentioned above and the legal profession. The Hindustani adage, "સુમકા પઇસા સખી ખાવે" (the wealth of a miser goes to those who make liberal use of it) came true.

SARDAR BIWALKAR vs. SECRETARY OF STATE FOR INDIA

This was a very interesting and important case against Government which I conducted before the District Judge of Thana and the High Court where we failed but we ultimately succeeded in the Privy Council which decreed the plaintiff's claim. The rulers of the State of Kolaba were the Angrias. In 1884 the State lapsed to the British Government as there was no heir to the last ruler. The Biwalkars were hereditary Dewans of the Angrias. Vinayek Parshuram Biwalker rendered valuable services to the Angrias as well as to the British Government. Several *inams* were conferred upon him by the Ruler. In a treaty entered into between the British Government and the Angrias, the British Government insisted upon the incorporation of a guarantee by the Angrias for the continuance of the *inams* and *sanads* in respect thereof were issued to

Vinayak Parshuram. These grants were further confirmed by the endorsement of Mr. Elphinstone and Lord Clare in 1835.

After the lapse of the Kolaba State to the British Government, one Mr. Davis was appointed to inquire into and report on the state of things in Kolaba. In his Report, he made several allegations against the administration of Vinayek Parshuram and said that excepting the *inam* income which was Rs. 10,000 at the date of the grant all other *inams* were unjustifiable. The British Government confirmed Mr. Davis' report and informed the Diwanji that only the *inam*, the annual income of which was Rs. 10,000, would be continued. After the death of Vinayek Parshuram, his son Dhundiraj Vinayek continued correspondence, with the British Government about the *inams*. After his death, his widow Umabai took in adoption one Vinayek. In 1885 Government informed Umabai that as the adoption had been made without the permission of Government, the *inam* would be continued to her only during her life-time and after her death, only half of the *inam* would be continued to her adopted son and the remaining half would lapse to Government.

Umabai died in 1917 and after her death, Government informed the adopted son Vinayek that in pursuance of their resolution of 1885, Government had decided to resume half of the *inam* and all the *inam* villages were put under attachment. Subsequently Sardar Vinayek submitted petition to Government claiming that he was entitled to the entirety of the *inam* villages, the forest and other rights, whatever the present income from them might be. In 1920, the Government of India decided that the claim of Vinayek as the adopted son should be fully admitted. This decision of the Government of India was communicated to Sardar Biwalkar by the Government of Bombay.

When, however, the Sardar asked for the restoration of the *inam* villages, he was informed in 1922 by the Govern-

ment of Bombay that they had considered the documents which were the foundation of the *inam* and they had come to the conclusion that all that the Sardar was entitled to was a cash allowance of Rs. 10,002. He was further told that the Government would allow him to take possession of the *inam* villages and other properties on condition that he should account for the income, retaining to himself only Rs. 10,002 and refund the balance to Government. These orders of the Government of Bombay amounted to a non-compliance with the orders of the Government of India.

The Sardar accordingly filed a suit against the Government of Bombay regarding the *inam* land. The suit was heard by Mr. Shannon, the District Judge of Thana, who dismissed the plaintiff's suit. On appeal to the High Court, which I argued on behalf of the Sardar, Chief Justice Beaumont and Justice Rangnekar dismissed the appeal. The Sardar appealed to the Privy Council. The tribunal reversed the decision of the Bombay High Court and decreed the plaintiff's claim. They held that the Sardar was entitled to the soil of the *inam* villages including the forests and all the income therefrom. They commented on the action of Government of Bombay in acting contrary to the guarantee for the protection of the *inam* that they had extracted from the Angrias, as well as to the orders of the Government of India and the opinion of their Advocate-General which was against their decision.

VITHALBHAI PATEL'S WILL

Mr. Vithalbhai Patel, a prominent Congress leader and the first elected Indian President of the Central Legislative Assembly died in Switzerland in October 1933. He left a will dated October 2, 1933 which was admitted to Probate by the High Court in September 1934. By his Will after providing for certain pecuniary and other bequests he disposed of the residue in the following terms:—

"The balance of my assets is to be handed over to Mr. Subash Chandra Bose to be spent by him or his

nominee or nominees according to his instructions for the political uplift of India and preferably for publicity work on behalf of India's cause in other countries."

Those who would, but for this clause, have inherited this amount as on any intestacy contended that the clause was invalid and inoperative. The executors thereupon took out an originating summons to determine the validity and proper construction of the clause. I appeared for the parties contending that the clause was bad as the Trust was not a valid charitable trust according to law. It was contended on behalf of Mr. Bose that there was an absolute gift to Subash Bose and in the alternative that it was a valid charitable trust. The amount covered by the clause totalled Rs. 1,17,796.

The whole controversy centred round whether the object "political uplift" was such a clearly defined object that if necessity arose, the Court could supervise and control its application. Mr. Justice Wadia as well as the Appeal Court (Chief Justice Beaumont and Justice Kania) held that the words "political uplift" may be understood to be different things by different people and it is not of a specific kind as to be capable of being definitely enumerated and that it was not possible for the Court when called upon to determine whether there was a breach of trust, to decide the question. It was held that there was intestacy in respect of the property covered by the clause and it would go to the heirs of Vithalbhai Patel as on an intestacy.

SHRI NATHJI LITIGATION

The Vallabhacharya cult of the Vaishanava religion was founded by Vallabhacharya, a great religious philosopher and saint some centuries ago. This cult now embraces many millions of people in India including wealthy merchants in Bombay and other parts of India. Vallabhacharya and his descendants were residing at Giriraj and had two

idols, one of Shrinathji and another of Navnitpriyaji, and the followers of this sect from all parts of India used to go to worship those idols.

In 1688 A.D., the then successor of Vallabhacharya migrated to Nathdwara in the Udaipur State where these two idols were installed. He was styled Tikayat Maharaj. The succession to the office Tikayat Maharaj came to be regulated by the rule of primogeniture. The Tikayat Maharajas were also themselves held in great veneration by the devotees of the idols. Numerous valuable gifts of immovable and movable properties as well as cash used to be made by devotees from all over the country. Some of these gifts were made in the name of the idols while others were made in the name of Tikayat Maharaj who was for that purpose identified with the idols and there were still further gifts that were made personally to the Tikayat Maharaj.

Govardhanlalji Maharaj was the Tikayat Maharaj till his death in September 1933. His eldest son, their heir apparent Damodarlalji who had already married a wife in March-April 1933, married again a Muslim girl called Hansa who it is said had embraced Hinduism. This created a great commotion among the devotees. On the death of Govardhanlalji Maharaj in September 1933, the Government of Udaipur in whose territory Nathdwara is situated passed certain orders whereby Damodarlalji was disqualified from being Tikayat Maharaj and by an Order dated October 10, 1933, his minor son Govindlalji was declared to be the Tikayat Maharaj and a Committee of Management of the Temple and its properties was appointed by the State. This Committee appointed certain devotees in Bombay as their agents in Bombay for the purpose of administering and looking after the properties in Bombay belonging to the Temple.

Damodarlalji, thereupon, in January 1934 filed a suit No. 23 of 1934 in the High Court of Bombay against the Committee of Management and his son Govindlalji, con-

tending that he was the Tikayat Maharaj of the Shrinathji temple, that the orders of the Udaipur Durbar were invalid and in any event, were not operative as regards properties in British India and that as Tikayat Maharaj, he was the owner of the idols of Shrinathji and Navnitpriyaji and that all properties, movable and immovable, purporting to be donated to the idols and all gifts and offerings to them belonged to him as his own property. On behalf of Govindlalji, his minor son, who was impleaded as a defendant, it was contended that the orders of the Udaipur Durbar were valid and that he was the Tikayat Maharaj. On behalf of the Committee of Management, it was contended that Govindlalji was the real Tikayat Maharaj under the orders of the Udaipur Durbar and that all properties, movable and immovable, offered to the idols belonged to the idols and not to the Tikayat Maharaj. The two idols were then added as party defendants and Ranchhoddas Patwari of Rajkot was appointed their *guardian-ad-litem*. On behalf of the idols the same contentions were taken as those raised by the Committee of Management and a counterclaim in accordance therewith was put in.

An application was made for the appointment of a Receiver. I appeared for the Committee. The Court appointed two leading Bhatia merchants as Receivers. In July 1935 Damodarlalji passed a document to the Udaipur State submitting to their orders and abandoning his claim to be Tikayat Maharaj. He therefore applied to the High Court for withdrawal and dismissal of the suit. His application was granted by the Court and his suit was dismissed but it was ordered that the counterclaim of the idols should be proceeded with and should be tried and disposed of on merits. Thereafter, Damodarlalji died and his son Govindlalji was brought on the record in his place as the defendant to the counterclaim. As the decision on the counterclaim of the idol was felt to be very important by the devotees of the shrine and as it was apprehended that the

final decision by the Privy Council in the matter would involve the delay of many years, all the parties in November 1941 applied to the High Court that the whole dispute should be referred for final determination to my sole arbitration and the High Court made the order on November 13, 1941.

The proceedings before me began on December 10, 1941 and I made my award on the April 19, 1942. The award declared that the idols were the owners of all properties, movable and immovable, donated from time to time either in the name of the idol or of the Tikayat Maharaj except in cases where the terms of the gift showed that it was made personally to the Tikayat Maharaj. The Udaipur Durbar as well as all the parties accepted the award and have acted upon it.

PROHIBITION CASES

In 1938 the Government of Bombay in order to give effect to their prohibition policy issued a notification under Section 14 (2) of the Abkari Act prohibiting the possession by any person without a pass, permit or licence of any quantity of any intoxicant other than those specified in the schedule annexed to the said notification in the City of Bombay and its Suburbs. Similar notification was also issued with regard to the city of Ahmedabad and other places. The Abkari Act was, as its preamble shows, enacted to regulate the import, export, transport, manufacture, sale and possession of liquor and also to regulate the Abkari revenue derivable from any duty, fee, tax, etc. that may be levied on the manufacture of liquor and intoxicating drugs. The notification instead of being subservient to the main purposes of the Act was in opposition to the main provisions of the Act. The Government of Bombay if they wanted to enforce prohibition should have passed a separate enactment for that purpose and should not have tried to effect their object by a notification under the Abkari Act which went contrary to the whole purpose and scheme of

the Act. The Madras Ministry under the wiser guidance of Mr. C. Rajagopalachari did not attempt a short cut like that attempted by the Bombay Ministry but passed a separate Act for Prohibition and introduced it only in limited areas and did not apply it to the presidency town.

On April 1, 1939, the house of Sheth Chinubhai Lalbhai at Ahmedabad was raided and a certain quantity of prohibited liquor was found. He was charged before a Magistrate for contravention of Section 14B of the Abkari Act read with the said Notification. The case was transferred by the High Court to the Court of the Sessions Judge, Ahmedabad, for trial. I appeared for the accused. The Sessions Judge convicted him and imposed a fine of Rs. 100. Several persons were similarly prosecuted in the City of Bombay but the Presidency Magistrate who tried these cases held the notification to be *ultra vires* and acquitted the accused.

Chinubhai Lalbhai of the Ahmedabad case filed an appeal in the High Court while Government filed appeals against the acquittal of the several accused in Bombay. All these appeals were heard by a full bench consisting of Chief Justice Beaumont and Justices N. J. Wadia, Macklin, Wassoodev and Sen. I appeared for Chinubhai Lalbhai, and for the various Bombay accused, Coltman, Jamshedji Kanga, Kolah and Velinkar appeared. M. C. Setalvad, the Advocate-General, appeared for Government. In addition to the objection that the notification went beyond the scope and object of the Abkari Act, it was urged that the power given by Section 14B to prohibit the possession of liquor by "any person or class of persons" did not permit Government prohibiting possession by the public generally.

The Court held that the effect of the notification was to nullify the whole object of the Act which pre-supposed the existence of the liquor trade and the collection of revenue therefrom. The Court further held that the natural meaning of the expression "any person or class of persons"

was, a person designated by name or description, or a class of persons designated. The contention put forward on behalf of Government that the words "any person" were equivalent to the word "every person" was negatived. The Court accordingly acquitted Chinubhai Lalbhai and dismissed the appeals of Government against the acquittal of the other accused. Before these cases were heard, the Congress ministry had gone out of office, having resigned in the month of November 1939.

On the very day on which judgment was delivered by the full bench, the Governor of Bombay who had taken over the administration of the province under Section 93 of the Government of India Act, promulgated the Bombay Abkari Amendment Act of 1940 whereby the preamble of the Abkari Act of 1878 was amended by inserting therein the words "and whereas in order to promote, enforce and carry into effect the policy of prohibition etc." In Section 14B for the words "any persons or class of persons," the words "any individual or a class or a body of individuals or the public generally" were substituted. These amendments made the Abkari Act a jumble of contraries. In a letter published in the *Times of India* of April 16, 1940, I pointed out that the Amendment Act made "strange bed-fellows of the bulk of the provisions of the Act and the amendments." Section 7 of the Act provided that the amendments shall have effect from the date on which the original Act of 1878 was enacted and that any rule, order or notification made or issued under the said Act before the commencement of the amending Act shall be deemed to have been made or issued under the original Act as amended by this Act, and that no prosecution, suit or other proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of any such rule, order or notification as the case may be. By this provision, it was attempted to validate the notification that had been declared invalid by the High Court and to proceed against persons

who had contravened the said notification before the passing of the amending Act. On the question coming before the High Court in some prosecution, the High Court held that a notification that had been held invalid by the Court, could not be validated by the retrospective provision. Government, therefore, had to issue a fresh notification under the Abkari Act as amended.

In the Press Note issued in promulgating the amending Act, it was explained that while this measure was taken to prevent administrative chaos, the Governor remained free to make such alterations or modifications in the policy of prohibition as may from time to time appear necessary. The ban on what is officially called foreign liquor which includes whisky, brandy, etc. manufactured in India has been lifted but prohibition has been continued as regards what is officially known as country liquor, viz., toddy, etc.

In order to compensate for the loss of Abkari revenue following the policy of Prohibition, the Congress Government imposed the Urban Immovable Property Tax at 10 per cent of the rateable value of immovable properties in the City and suburbs of Bombay and Ahmedabad. This was on the face of it an inequitable imposition restricted to a particular class of investments. If prohibition was considered necessary as a measure of social reform, then all classes of people should have been made to contribute to the cost. By the Congress Government's measure, a person holding several lakhs worth of Government Paper or shares in joint stock companies does not contribute anything while a house-owner owning a property of much smaller value is made to pay 10% of the rateable value of his property.

Owing to the serious falling off in the imports of foreign liquor, whiskies, brandies and other intoxicants began to be manufactured in India from which Government is deriving by way of taxation additional revenue which materially offsets the loss of Abkari revenue occasioned by

prohibition. There is therefore no justifiable reason for continuing the Urban Immovable Property Tax.

The unjust refusal by the Congress Ministry to exempt Muslim Charitable Trust properties from the taxation will be referred to in another place.

THE OFFICIAL ASSIGNEE, BOMBAY
vs.
MIRZA MAHOMED SHIRAZI AND OTHERS

This suit in which I with Rustom Wadia appeared for the Shirazi defendants, had an extraordinary story behind it and was an illustration of how under certain circumstances the process of the Court might be abused to the serious detriment of innocent people. The suit was filed by the Official Assignee as the assignee of the estate of one Aga Mahomed Hakimkhan Shirazi who was adjudicated insolvent in 1850. The basis of the suit was that about the time of his insolvency, the insolvent had deposited jewellery and valuables worth about six lakhs of rupees with one Zanal, the grandfather of the defendants, in fraud of the creditors of the insolvent. The suit was filed against the grandchildren of Zanal to recover out of the estate of Zanal the value of the fraudulent deposit alleged to have been made over 50 years earlier with interest.

The suit was heard for over two months, a very large number of witnesses were examined, including experts in handwriting as to the genuineness of a promissory note alleged to have been passed by Zanal to the insolvent in 1850 and the genuineness of certain acknowledgements alleged to have been given by Abdul Husein, the son of Zanal to the son of the insolvent. After a protracted hearing, Justice Beaman who heard the case, delivered a long judgment on November 11, 1907 covering about 78 pages of close type.

It appears that the insolvent remained in jail from 1847 to 1850 at the instance of his creditors. Every effort was made by his creditors to trace his property and about

four lakhs of rupees were collected. In 1850 the insolvent left for Persia and died there in 1856. Before leaving Bombay he had given a Power of Attorney to Zanal. There was continuous litigation in connection with the insolvency and the insolvent's estate, in which Zanal, the creditors, and the Official Assignee were involved. At the instance of Zanal the Official Assignee filed a suit against the Shustaries who were the principal creditors of the insolvent. The suit was compromised in 1875 and the Official Assignee took Rs. 75,000 for the benefit of the estate and allowed Zanal to keep the balance of the compromise amount.

In 1878 there were quarrels between Mahomed Nabi, the son of the insolvent and Abdul Hussein, the son of Zanal, and as a result of this quarrel the son of the insolvent gave to Nabikhan, a creditor of the insolvent, documents including the promissory note of 1850 and some sanads passed at different times for various amounts to Mahomed Nabi son of the insolvent. In 1878 Mahomed Nabi, the son of the insolvent, himself filed a suit against Abdul Husein claiming certain moneys of the insolvent which Abdul Husein was alleged to have retained as the result of the litigation with the Shustaries. Although at this time Mahomed Nabi was supposed to have the documents on which the present suit was based, he made no reference to them or to the alleged deposit in 1850. In 1881 the then Official Assignee himself filed a suit against Abdul Husein to recover a sum of about one and a half lakhs of rupees.

Abdul Husein died in 1900 and in 1902 Mahomedali, the grandson of the insolvent, filed a suit against the family of Zanal in respect of the alleged deposit in 1850 based on certain documents alleged to have been discovered about 1900. After a long hearing that suit was compromised. It was one of the defences in that suit that if anybody had a claim in respect of the alleged deposit, it would be the Official Assignee and not the grandson of the insolvent. When the

suit of 1902 was settled, the plaintiff in that suit himself stipulated through his Counsel Basil Scott, in the terms of the compromise recorded by his counsel in his own handwriting, that Mr. Owen of the firm of Messrs. Cragie, Lynch & Owen, Attorneys for the defendants, should personally destroy the original documents on which the suit was filed. The documents were accordingly burnt by Mr. Owen, but everybody forgot that a number of photographs and enlargements of the documents had been put in evidence by the experts in handwriting examined in the suit.

The suit of 1905 was based by the Official Assignee on these photographs left on the records of the Court. The principal defences were that the suit was barred by limitation and the documents were forgeries. On the question of limitation, the learned Judge held that the Official Assignee in 1905 had as little or as much knowledge as his predecessor had in 1881 in the suit which he then filed and the bare fact that some documents were discovered in proof of the alleged deposit would not save limitation under Section 18 of the Limitation Act. This was sufficient to dispose of the suit but the learned Judge thought fit to deal with all the other matters in the case. He further held against the genuineness of the documents on the photographs of which the suit had been based.

During the course of the trial a curious incident took place. A witness Hafiz, Librarian of the Royal Library at Rampur, who was supposed to be an expert in Persian calligraphy was being examined by the plaintiff. Whilst he was under examination one Amantullakhan made an affidavit that the defendants had paid him (Amantulla) Rs. 2,000/- to bribe the witness Hafiz. On that affidavit and without any notice to the defendants and behind their back, the learned Judge gave sanction to prosecute the defendants. The Judge evidently had his misgivings at the time, because when signing the order he made an elaborate note that he hoped that the learned Counsel who applied for

the order would take care that no misuse was made of it for the purpose of the suit. As a result of this sanction, the plaintiff obtained a search warrant and the office of the defendants was raided and various books were seized. The presence of the police at the office in the evening was the first intimation of what had happened. The next day the defendants complained of any such order being made during the course of the hearing without any notice to them and the learned Judge stated that in making the order he did not express any opinion as to the truth of the allegations or otherwise, and he made the Order only to remove the bar created by the Criminal Procedure Code.

The defendants promptly filed an appeal against the sanction. During the course of the further hearing of the suit, the man Amantullakhan on whose affidavit the sanction was given was called as a witness by the plaintiff to prove the offer of bribe. The incident could have no direct bearing on the suit and he was evidently called to create prejudice against the defendants. The result was the reverse and the witness created such a bad impression on the learned Judge that he recorded that Amantullakhan was not many minutes in the box before he (the Judge) began to entertain the gravest doubt whether it was safe to believe him. When the appeal against the sanction came up, this record of the learned Judge's estimation of the worth of Amantullakhan was read, and the Appeal Court set aside the sanction.

In doing so, Sir Lawrence Jenkins, made some pertinent observations. He said everybody knew that such orders were often obtained to put pressure on the opponent to compromise and that if the Court thought there was room for investigation, the Court should not put such a weapon in the hands of the opponent but should direct that the papers be sent to the Public Prosecutor. The Judge, as already stated, held the suit barred by limitation. As regards the documents on which the suit was based he considered the evidence of the experts entirely worthless.

He passed strong remarks about the way in which successive Official Assignees had dealt with the matter. He observed that in 1875, after the suit against the Shushtaries had resulted in recovery of a large amount, the Official Assignee accepted Rs. 75,000 on behalf of the creditors and allowed Zanal who had taken upon himself all the risk and trouble of the litigation as relator to retain the rest. Later, another Official Assignee filed a suit to recover from Zanal the amount which his predecessor had agreed to be retained by Zanal. That attempt failed. More than 20 years later, when all hope of getting any vestige of truth as to what had happened in the past had left every reasonable mind, a third Official Assignee allowed himself to be put forward and lent himself to drag the family into litigation on the strength of extremely questionable documents found in most suspicious circumstances. The Judge observed that the progress of the suit would be construed as an unfavourable example of the extent to which the machinery of the Courts could be used to satisfy the personal grudge of parties unconnected with the estate, and remarked that in these insolvency proceedings there ought to be an end at some time. He also observed that it appeared shocking after the lapse of all these years and after protracted litigation between 1847 and 1887, that it should be possible to reopen the whole matter and prosecute a claim of this sort against parties who admittedly could have no hand in the alleged fraud, upon the strength of such papers as the grandson of the insolvent was alleged to have found in the box in 1900.

The learned Judge further made strong observations regarding the relations between the Bench and the Bar and the fundamentals of professional etiquette. He affirmed that it was the right and duty of the Bench to look to the Bar for loyal assistance and there was a corresponding duty on the Bar, particularly its leaders, to refrain from derogating in the least from the respect due to the Bench whatever their personal grievances may be and that once a Judge

had ruled a point, that ruling ought to be treated not only as final but as right, so long as the case remained with the Judge. He stated that Counsel were free to criticise it in the proper place such as the Court of Appeal but they were not entitled to express any such opinion in the Judge's own Court and in his presence. These remarks were provoked by the way in which Raikes from time to time expressed his view that some rulings given by the Court were not correct.

LEGISLATIVE ANACHRONISM

Section 106 of the Government of India Act 1919 and Section 226 of the Act of 1935 provide as follows: (1) "Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction, in any matter concerning revenue or any act ordered or done in the collection thereof according to the usage and practice of the country of the law for the time being in force."

(2) "A Bill or Amendment for making such provisions as aforesaid shall not be introduced into or moved in a chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or as the case may be, of the Governor in his discretion." No such legislation as contemplated by clause 2 of the Section has been passed.

In *Dwarakachand Cement Company vs. the Secretary of State for India*, Mr. Justice Rangnekar commented on the incongruity of re-enacting in Section 226, a provision which might have been necessary in the time of Warren Hastings but is quite inappropriate to present conditions, because the result is that while the jurisdiction of the High Court is barred in matters concerning revenue or concerning any act ordered or done in the collection of revenue, the Courts in the mofussil are free to exercise such jurisdiction and the High Court can deal with these questions in appeal. Mr. Justice Rangnekar said: "Section 106 was first enacted in

the year 1781 by Geo III, C. 7, S. 8 and it is well-known that the necessity for the enactment of the section lay in the historical conflict between Warren Hastings and the then Supreme Courts. Why this section continued to be retained in the subsequent Government of India Acts, including the Act of 1919 (9 and 10 Geo. V. C. 101) which, it is common ground, applies to this case, and even finds a place in the present Government of India Act of 1935 (25 Geo V. C. 2) is difficult to appreciate. The conflict had ceased long ago and as has been said, there is not the slightest justification for retaining this antiquated fossil on the Statute Book."

The Federal Court on appeal from the High Court at Calcutta in the appeal of the Governor-General in Council vs. the Reliegh Investment Co. had also to deal with this point. The Calcutta High Court had got out of the prohibition contained in the section by saying that where the law imposing the revenue is itself illegal, a dispute in relation to it cannot be said to concern the "revenue." In dealing with this point, the Chief Justice of the Federal Court said:

> "It is true that this section corresponds to a provision enacted more than 150 years ago, in very different circumstances, and it is anomalous to deny to the High Court in its original jurisdiction power to try questions which a Subordinate Court and the High Court itself in its appellate jurisdiction are not precluded from trying. When framing the Constitution Act of 1935 it was open to Parliament to omit or change this provision. But it has not done so. The opening words of Section 226 indicate that the attention of Parliament was directed to the question of the expediency of retaining the prohibition in the old form, but Parliament preferred to leave it to the authorities in India to decide the time when and the form in which the provision should be recast. So long as the provision is there, it is

the duty of the Court to give due effect to the natural meaning of the words employed."

It is a great pity that no member of the Central or any local legislature has taken steps to remove this anachronism which unjustly bars the rights of subjects in the presidency towns and denies to them the remedy which subjects in the mofussil enjoy.

STRANGE EXPERIENCES

CROSS-EXAMINATION BANNED

IN my appellate side days, I used to go to the mofussil to conduct cases. I was once taken to Deeṣa, a small town in the Mahikantha Agency, to appear for a money-lender plaintiff who was claiming Rs. 9,000 from a Subedar-Major attached to the Indian Troops stationed there. The Judge, an European, was a Major in the Army. After we were in Court for some time, the Judge arrived followed by a big dog who remained on the dais near the Judge. I called the plaintiff's evidence and proved by his books and other evidence his claim. Then the defendant Subedar-Major went into the witness box. He deposed that the whole sum alleged by the plaintiff to have been advanced was not advanced and that he, the defendant, had from time to time paid various sums to the plaintiff which the plaintiff had not credited in his books, with the result that nothing was due from him to the plaintiff.

I rose to cross-examine the defendant. The Judge turned to me and sharply said. "I can't allow you to cross-examine the defendant. I cannot allow the word of the Subedar-Major to be questioned in this Court." I pleaded in vain that I was entitled to cross-examine the witness and the plaintiff's suit was dismissed. The appeal from that Court lay to the Political Agent at Palanpur. We filed an appeal and also along with it an application that the defendant should be summoned to be present at the hearing of the appeal and we should be allowed to cross-examine him. On the date fixed for the hearing of the appeal, I went to Palanpur. When we went to the Court of the Political Agent, his clerk told me that the Saheb wanted to see me in his Chamber. When I went to his room he told me that the Lower Court was quite wrong in preventing me

from cross-examining the defendant, that the defendant had been summoned to be present and that I could cross-examine him. He added, however, that I should not handle the Subedar Major roughly but take him gently in cross-examination. I assured him that it was not at all my purpose to handle the defendant roughly in the course of cross-examination. After I left, the Political Agent sent for the defendant. I do not know what happened between them but soon afterwards I was called in again and the Political Agent told me that he had spoken to the defendant and advised him to come to a settlement and suggested to me that I should advise my client to agree to a compromise. Ultimately a settlement was arrived at, my client giving up a portion of the heavy interest that he had charged and each party bearing his own costs.

JUDGE RECEIVES DEFENDANT

Sometime in 1910, I and Mr. Taraporewala were engaged for the defendant in a case pending in the Court of the Assistant Political Agent at Rajkot who was a Military Officer. The plaintiff was a cloth merchant of Bombay and Mr. Branson was engaged to appear for him. The case had arisen under the following circumstances. My client, the defendant Harbamji, who was a brother of the then Ruling Prince of Morvi was administering the state of Nawanagar during the absence of Jamsaheb Ranjitsinghji in Europe. The plaintiff was arrested and kept in custody for some time in Jamnagar by the order of Harbamji. Harbamji had then left Jamnagar and was at the date of the suit residing at Rajkot. The plaintiff sued him in the Rajkot Court for heavy damages for wrongful arrest and imprisonment.

The hearing of the case was fixed during the Cricket Week at Rajkot. The Judge wanted to see the cricket matches and therefore, the Court sat from 12 to 3. One day while Branson was arguing some point, a peon of the Judge brought in the card of a visitor. The Judge told the peon

to put a chair near him on the dais and to usher in the visitor. The visitor came in, the Judge rose and shook hands wth him and made him sit in the chair near him. The visitor was none else than my client Harbamji, the defendant. I was surprised to find my client visiting the Judge like this when the case against him was being heard. Branson apparently did not know my client and he turned to me and asked who the visitor was. I told him that he was my client. On that Branson looked furious and uttered in my ears condemnation of the Judge in very strong language. The case lasted for ten days and we won. The suit was dismissed with costs. The decision was right but the above incident was unfortunate.

CRIMINAL CASE DISPOSED OF BY CONSENT

One cannot imagine a criminal case being disposed of by consent but this did actually happen once. A young man in Ghogha was charged with culpable homicide not amounting to murder and was sentenced to transportation for life. An appeal was filed and I was engaged for the accused appellant. The appeal was heard during the May vacation by a Bench consisting of Justices Mirza and Percival. The record was voluminous and the appeal took over two days to hear and the Judges reserved judgment.

After a couple of days, the matter was put down on board for judgment. Justice Mirza delivered his judgment acquitting the accused but Justice Percival was for conviction and confirming the sentence. They announced that in view of this difference the matter would be referred to a third Judge for final decision. I then went to the Law Library and other cases were being heard. Mr. Harilal Parekh a leading criminal lawyer of Ahmedabad who was instructing me in the appeal, came to me in the Library after a little while, and told me that if the third Judge agreed with Justice Percival, it would be very hard on the accused and that I should move the Judges to reconsider

the matter and dispose of the appeal by agreement amongst themselves. I told Harilal that judgment had been already delivered and I could not ask the Judges to reconsider the matter. But he pressed me very much and I went to the Court with him.

Some other appeal was being heard at the time and so I waited till that was finished. I then told the Court something to the following effect. "From the fact that your Lordships have so completely differed, it is apparent that the merits are such that two divergent views are possible. It is difficult to say with any confidence which view is right. There is room, therefore, for your Lordships to re-consider the matter and adjust your views. I am pressing this upon your Lordships because my client has suffered long both in mind and money during the pendency of these proceedings and a further hearing after the vacation by a third Judge will entail additional expenditure and distress of mind to him. May I therefore urge upon your Lordships to attempt some adjustment of views?" To my surprise, the Judges agreed and they said they would retire for further consideration and call us when they were ready.

After about an hour the Judges returned to the Court and we were called. Justice Mirza said (I am recalling as far as I remember the exact words) "We have arrived at a compromise and will convict your client of grievous hurt." While he was saying this, I was feeling very uncomfortable fearing that the Government Pleader who was appearing for the Crown in the appeal would get up and object to the whole proceedings. Luckily, he did not. Justice Percival then turned to me and asked "What sentence will you take? We suggest five years' rigorous imprisonment." I rejoined that that was too much and two years would be enough and the Judges consulted together and said "We will give three years." All the time I was very apprehensive that the Government Pleader would intervene and upset the whole apple cart.

I had to go through a further critical stage. Justice Mirza turned to the Government Pleader and said: "Mr. Government Pleader, do you consent to this?" In a desperate effort to avert the impending catastrophe, before the Government Pleader could say anything, I intervened and said to the Court "Of course, the Government Pleader cannot consent to anything but he I am sure will leave the matter in your Lordship's hands." I thus succeeded in preventing the intervention of the Government Pleader who I could see was feeling very uncomfortable. The Judges altered the original decision and convicted my client of grievous hurt and sentenced him to three years.

QUEER LITIGANTS

1. *AHMEDBHOY HABIBHOY*

AHMEDBHOY HABIBHOY was a wealthy Khoja businessman in Bombay. He was for many years the Chairman of the Bank of Bombay. He was a very close-fisted and miserly old man but had great love of litigation and during his life-time he must have put a lot of money in the pockets of lawyers. People used to say that the legal profession should raise a statue to him because he was their great benefactor. In the course of his various litigations, he had gone round to many solicitors' firms in Bombay. He would employ one firm and when at the end of the litigation, the firm presented him with the bill of costs, he would go to another firm of solicitors to contest the bill of his first solicitors and so he employed many solicitors one after another. I held his general retainer for many years.

One day, a partner of a leading solicitors' firm came with Mr. Ahmedbhoy for a conference, I saw that Mr. Ahmedbhoy had shifted to a new firm of solicitors. At the end of the conference, I asked the solicitor to stay on for a while as I wanted to speak to him. After Ahmedbhoy left, I said to the solicitor that I was surprised that he had taken up Mr. Ahmedbhoy's work because he must be aware of the habit of Ahmedbhoy to leave his solicitor as soon as the bill of costs was presented to him and go to another solicitor to contest that bill. The solicitor told me that he was fully aware of Ahmedbhoy's ways but he knew how to deal with him. Mr. Ahmedbhoy, he said, would leave him if he presented his bill to him. He said he would never present his bills to Ahmedbhoy so that no occasion would arise for Ahmedbhoy to leave him and go to another solicitor and that when Ahmedbhoy was dead his executors would pay the bill of costs fully. He further said that if he himself

died before Ahmedbhoy, his firm would recover the bills from Ahmedbhoy's executors, who in any event, would not be as cantankerous as Ahmedbhoy.

The result was exactly as the solicitor had anticipated. When Ahmedbhoy died leaving no will, his heirs came to a settlement between themselves after filing an administration suit and then paid fully this firm's bills which had accumulated to over two lakhs of rupees.

2. *CHHABILDAS LALLUBHAI*

Chhabildas Lallubhai, a wealthy Bhansali citizen of Bombay was a great character in the eighties and nineties of the last century. Once a set-back line was contemplated by the Municipality in which part of his land was to be included. In order to prevent this, it is said, he erected the whole frontage of a building on that land in one night and thus defeated the intended object of the Municipality. I became acquainted with him and he always proved himself a good friend. He assisted me in getting the votes of his European and Indian friends at the municipal election in 1892 and subsequent years.

He was very resourceful and I remember how on one occasion he baffled Mr. Inverarity. I was present in Court when this happened. Chhabildas bought a property for about Rs. 25,000/- at a mortgagee's sale. The mortgagee conveyed the property to Chhabildas but the mortgagor refused to give possession alleging that the sale was irregular and collusive and at a gross undervalue. Chhabildas filed a suit in ejectment against the mortgagor and the mortgagee was joined as defendant. Mr. Chhabildas gave evidence denying the allegations of the mortgagor. Mr. Inverarity was cross-examining him on behalf of the mortgagor. Inverarity asked him, "Will you sell the property for Rs. 30,000 " Chhabildas in an emphatic tone replied "No." Inverarity again asked him, "Will you sell it for Rs. 35,000?" Chhabildas again said "No." Inverarity went on like this upto Rs. 60,000, and still Chhabildas said "No." Inverarity

thought he had established his case of undervalue because if Chhabildas was not willing to sell for Rs. 60,000/- the property which he had bought only a very short time ago for Rs. 25,000/- the property must be worth more than Rs. 60,000. Inverarity then asked Chhabildas: "Why won't you sell for Rs. 60,000/- property for which you have paid only Rs. 25,000?" Promptly came the answer: "Chhabildas always buys immoveable property but having bought, he never sells whatever profit is offered to him." This brought down the whole superstructure of Inverarity's cross-examination on the point of undervalue.

I remember another occasion on which he figured in the witness box. A suit was filed by one of his sons or grandsons for partition of properties held by Chhabildas on the ground that they were ancestral properties. I was appearing for some of his minor grandsons. Raikes was appearing for the plaintiffs. Chhabildas was being cross-examined by Raikes in the course of which some correspondence between him and his son Ramdas, who was a Barrister practising at Nagpur, was being read. In one of the letters, Ramdas had written to Chhabildas saying that he had not much of practice at Nagpur and that his wife was presenting him with a child every year. Chhabildas shouted from the witness box: "Ask him whose fault?" This made all the Court including Justice Beaman burst into laughter.

He was asked about some heavy item appearing in the accounts, the suggestion being that that was part of the nucleus of ancestral property by which Chhabildas made his fortune. Chhabildas' explanation about that item was that it was his share of the freight which he earned along with another partner, a military official, by several voyages that a rotten ship which they had bought for a modest amount and which could never have gone out of the harbour, was supposed to have made to Abyssinia during the Abyssinian War.

Once he was going on a voyage to England and wanted a single-berth cabin for himself in a P. & O. Steamer but the P. &. O. people would not oblige him and placed him on the top berth in a two berth cabin with a European passenger in the lower berth. Chhabildas on the first night of the voyage behaved in such a filthy manner that his fellow-passenger begged the Captain to put him somewhere else and so, Chhabildas secured for himself alone a two-berth cabin. He used to relate this story himself. He was a clever and selfmade man but of little education, and his talk and behaviour bordered on vulgarity.

Once he was summoned to serve on a special jury in the Sessions Court in a case which was expected to last several days. He was unwilling to be empanelled and before the appointed day tried his best with the prosecution as well as the defence to agree to challenge him but without success. On the day of the trial he found himself empanelled. He walked into the jury box and then sprang a surprise. He stood up and with a medicine bottle in his hand told the Judge that he was suffering from dysentry and would be obliged to go to the W.C. at short intervals. The Judge promptly discharged him.

AS A JUDGE

WHEN I became a Judge, I was confirmed in my view that the work of a Judge was much less exacting though possibly more responsible, than the work of Counsel. I remember Jenkins once remarked jocularly about a Judge's work "When counsel on both sides have thrashed out a case, unless you are an absolute fool, you can't go wrong".

I took my seat on the bench early in June 1920. Mr. Bahadurji on behalf of the Bar welcomed me. In reply, I emphasised that it was not enough that justice was done but that parties and counsel should feel that justice was being done and that for that purpose a judge should give patient hearing. I further said that I would very much miss the free and pleasant atmosphere of the Bar Library.

During the short period of four months that I was on the bench, I sat in the Criminal Sessions for 40 days which was a record length for criminal sessions in those days.

In an earliar chapter, I have narrated my extraordinary experience of the disposal of a criminal appeal by consent. I did something similar in the trial of a criminal case at the Criminal Sessions but in a manner and under circumstances quite different. A mehta (clerk) in an Indian firm was charged with criminal breach of trust, embezzlement and other serious charges as well as with some minor charges of cheating etc. I had read the proceedings before the committing magistrate. The evidence recorded had created the impression on my mind that the serious charges could not be maintained but that the minor charges could be established. There were many witnesses and many entries had to be traced through numerous books and the hearing would have occupied several days. When the case was called on, I put to the Advocate-General who was pro-

secuting, the impression that had been created on my mind and asked him to consider the evidence he was going to lead and if he felt that the serious charges could not be maintained, to further consider the desirability of his entering *nolle prosequi* on those charges. Further, I put to the accused's counsel to consider the defence position as regards the minor charges and if he felt that it would be best for his client to plead guilty on those charges, he might advise the client accordingly. The hearing was adjourned to the next day when the Advocate-General entered *nolle prosequi* on the serious charges and the accused pleaded guilty on the minor charges. The case was disposed of by a fine of an appreciable amount.

In those days, under the Bombay Rent Restriction Act, many suits were filed by landlords for evicting their tenants, on the plea in the terms of the Act that they wanted the premises for their *bona fide* and reasonable use and occupation. At the hearing of these suits, the usual issues based on such allegations were raised and evidence was taken of witnesses on both sides. This occupied a good deal of the Court's time. I always thought that in many cases, reasonable adjustments could be made by gentle judicial pressure put upon the parties. I tried this method and found that it worked very well. In several cases, the landlords were persuaded to be content with a part of the premises being surrendered by the tenants, and in other cases the tenants only required some reasonable time to vacate and the landlord was persuaded to give that time.

In an important case, I had the satisfaction of sending away all parties satisfied by this method of adjustment. There was in the Fort area premises belonging to the Archdiocese of Bombay which was in charge of the Archbishop of Bombay. The property had been notified for acquisition by the Municipality for widening the road but the Municipality had not actually acquired the property as their full scheme was being prepared. In the major portion of this

building, the Examiner Press belonging to the Archdiocese was located and two small portions were occupied by a Parsi clock-maker and a hair-dresser respectively. As the Press had to be moved because of the impending acquisition by the Municipality, the Archbishop wanted the Press to be shifted to another building in the same locality which also belonged to the Diocese. That building consisted of four floors and was occupied by fifteen different tenants who had business offices there. The Archbishop wanted these 15 tenants as well as the hair-dresser and the clock-maker to vacate in order that the Examiner Press could be removed there and the Examiner Press building could be handed over to the municipality. The tenants having declined to vacate, suits were filed against them.

When the suits were called on before me, Mr. Strangman, the Advocate-General appeared for the plaintiff while the 17 tenants were represented by different counsel. I enquired of Mr. Strangman how long the cases would take and he replied that altogether they were likely to occupy a week. After the pleadings were read, I came to the view that this was a case eminently fit for adjustment. So I called the Manager of the Press who was present in Court into the witness box and I questioned him about the various different departments of the Press. With regard to each department, he gave an idea of the space required. Then I put to him that in days of general want of accommodation, could he not arrange his departments in such a manner as to occupy less space? I then made him go through each department and got from him the barest minimum space necessary. When that was ascertained, it was found that it was possible to accommodate the whole Press in two floors of the other building. Then I questioned the 17 tenants one after another and got from them the minimum space they could do with although with some inconvenience. It was then found that all the seventeen tenants could be accommodated in the remaining two floors of the other

building. Then remained the difficulty about the clockmaker and the hairdresser in the Examiner Press Building who were also asked to vacate in order to enable the Archbishop to hand over the building to the Municipality. The clockmaker was a Parsi who was known to be in opulent circumstances. I put to him that as the acquisition by the Municipality had been pending for a considerable time, he must have thought of getting some other premises for shifting his business and after a few questions he admitted that he had already contracted to buy a building in the Fort area, in a portion of which he could remove himself but he said that it would take some three or four months to complete the sale and get vacant possession of the portion he wanted to use himself in that building. On being questioned, the hairdresser admitted that he had made arrangements to shift to other premises, which he had agreed to rent but he would get possession of them only after three months. In order to settle the difficulty about these two tenants, I suggested to Mr. Strangman that he should send for Mr. Mackison, the Executive Engineer of the Municipality. When he came, I put to him that when the Municipality had delayed taking possession of the building for nearly a year and a half, could they not stay their hands for a few months more? He agreed. Thus all parties were satisfied- and by 2 o'clock, a consent decree was taken in all the 17 suits giving effect to the adjustments agreed to. This method of adjusting the convenience of landlords and tenants was also much appreciated by the members of the Bar because while one Rent Act suit would ordinarily take a day or two, by this process of adjustment half a dozen suits could be disposed of in a day and counsel could work out six briefs instead of one. I remember the late Sir Dinsha Mulla, some time after I resigned the Judgeship, showing me a fine new motor car that he had bought and said that that was a Rent Suits Car. I could not grasp at the moment what he meant. He explained that because of my method of disposing of rent suits by adjustments wherever possible,

he had earned considerable fees in my court and had bought that car from those fees.

About the middle of October, a few days before the October recess, I resigned my post in order to stand for election to the Indian Legislative Assembly.

THE BAR

AMONG the High Courts in India, only the High Courts of Bombay, Calcutta and Madras have original jurisdiction. The other High Courts are purely Appellate Courts. On the Original Side of the Calcutta and Bombay High Courts, only Barristers had audience for some time. In Madras, many years ago, pleaders were allowed audience on the Original Side. In Bombay an examination was instituted in which persons who had obtained the Degree of LL.B. of the Bombay University and had thereafter put in attendance for one year on the Appellate Side and one year on the Original Side of the High Court, were allowed to appear, and in order to pass the examination a high percentage of marks had to be obtained. Those who had passed only the LL.B. examination or the High Court Pleader's examination were given audience only on the Appellate Side of the Bombay and Calcutta High Courts. Since the Bar Councils Act, those privileged to practice on the Original Side are called Advocates O.S. while all others are styled Advocates. This system had the effect of making it difficult for Indians to become eligible for practice on the Original Side of the Bombay and Calcutta High Courts. At the time I joined the Appellate Side Bar, it was felt that it was unfair that persons who had passed the University LL.B. examination or the High Court Pleader's examination, were debarred from practising on the Original Side, while persons who had passed a more easy examination in England had the privilege of practising on the Original Side.

When I was admitted as an Advocate on the Original Side in 1898 there were comparatively few Indian Barristers practising on that side. As years went on, more and more Indians qualified in England joined the Bar and an in-

creasing number also passed the Advocates' examination and began to practice on the Original Side. In recent years, the number of practitioners on the Original Side has very much swollen and at present there are about 300 to 400 on the Roll. The result is that while the available work is largely monopolised by senior counsel, the juniors do not get sufficient opportunity to secure a footing. Even in cases where two counsel are briefed, two seniors are often briefed instead of one senior and one junior. There was at one time the system of "holding briefs" under which a senior counsel if he found himself unable to get into a particular Court, asked a junior to hold his brief and conduct the case. By this, several juniors got a chance of conducting cases and showing their mettle. I used freely to encourage juniors by asking them to hold my briefs. In 1921-22, some dissatisfaction arose as to the manner in which the holding system was worked by some members of the Bar. A Committee consisting of Strangman, the Advocate-General, and Bahadurji was appointed to investigate the matter. In the result, the holding system was abolished. I think that this has worked injuriously to the interests of juniors. The present state of things has led to considerable disappointment among the young people who joined the Bar with high hopes of getting into good practice.

As early as 1920, I felt that something must be done to remedy this state of things. On my return to the Bar after resigning the office of member of the Executive Council in 1923, I decided personally not to draw pleadings or appear in short causes and also raised my fees generally for all sorts of work. I tried to persuade my senior colleagues to lay down for themselves a similar self-denying rule so that more work would be released for the juniors. I however failed in converting them to my views. Dissatisfaction in the junior ranks is getting intensified and in my opinion it is imperative that some steps should be taken to bring about a more even distribution of work.

In January 1938, the question of the advancement of juniors was considered at a meeting of the Original Side Bar and it was resolved that the Chief Justice and Judges be requested to make rules for the creation of two divisions of the Original Side Bar, Senior and Junior, any member of the Bar of not less than 10 years' standing to be put in the senior list on his application. The senior Advocates were not to appear in Chambers or on a notice of motion or in a short cause unless the matter was of a complicated nature in which case he could appear along with a junior. Further a senior Advocate should not accept a brief for consent decree or adjournment except when a brief for hearing had been already delivered to him. Where two or more counsel are briefed, at the hearing and final disposal of any suit, there must be one junior among the counsel briefed. A Senior Advocate should not draw pleadings or affidavits but merely settle them after they had been drawn by a junior.

These proposals were submitted to the Chief Justice and Judges but nothing has been done. On August 3, 1939, the Bar Association passed the following resolution:—

> "The Bar Association is of opinion that a division of the Bar into two sections and the introduction of a system similar to that of King's Counsel and Juniors as obtaining in England is desirable in the interests of the Bar and of the litigating public, as suggested in this Association's Resolution on January 31, 1938; and the Association trusts that Their Lordships will give effect to the proposals contained in the said resolution."

I think the whole question requires to be reviewed by the Chief Justice and Judges of the High Court with a view to early action being taken to secure an equitable distribution of work among the members of the Bar. It may be necessary in order to give effect to the recommendations made by the Bar Association to amend the Bar Councils Act and there should be no difficulty in doing that.

PRIVILEGES AND DUTIES OF COUNSEL

The principles governing the privileges and duties of Counsel were very clearly defined by the Full Bench in the case (8 Bombay High Court Report page 126) already referred to in another connection. The Court laid down that every subject in all Courts of Justice is entitled to assert and defend his rights, and to protect his liberty and life by the free and unfettered statement of every fact and to make use of every argument and observation that can legitimately (i.e., according to the rules and principles of laws) conduce to these important ends. Every individual has this right, and may exercise it in his own person or he may commit its exercise to counsel, who takes it as his delegate; its nature and character are not altered by this delegation; it is still the same, to be exercised in the same manner and for the same purposes, and subject to the same liabilities and control, as it would be if the party were pleading his own cause. These considerations, they said, would at once show the fallacy of the argument that instructions to counsel are the test by which it should be determined whether or not the line of duty had been passed. No instructions, it was held, could justify observations that are not warranted by facts proved, and it is a duty of counsel towards his client to use his own judgment, experience and discretion and as a result, whatever be his instructions, to exclude all topics and observations of which the case does not properly admit subject to its just and necessary limits. This right, they said, when duly exercised and directed to its proper purposes, should not be fettered or impeded, for if it be, an injury is sustained not by the client alone but by the whole community, whose interests are inseparably connected with a right essential to the administration of justice.

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As regards the duties and obligations of Public Prosecutors and Counsel for the Crown equally pertinent observ-

ations were made. They quoted the following observation made by a learned Judge:—

> "The counsel for the prosecution has most accurately conceived his duty which is to be assistant to the Court in the furtherance of justice, and not to act as counsel for any particular person or party. He should not by statements aggravate the case against prisoners or keep back a witness because his evidence may weaken the case for the prosecution. His only object should be to aid the Court in discovering truth. A Public Prosecutor should avoid any proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for grasping at conviction."

I remember how on two occasions, the above principle was courageously followed. I was present in the second Appellate Court when a criminal appeal was being argued. When the pleader for the accused finished, the Court turned to Rao Saheb Mandlik, then Government Pleader, and asked what he had to say in support of the conviction. Mandlik answered: "I am afraid, My Lords, I cannot support the conviction." On another occasion, when Government appealed against the acquittal by Mr. Jacob, Sessions Judge of Poona, of certain persons implicated in what was known as the Daruvala Bridge Riot Case, the appeal came on for admission before Justice Jardine and Justice Parsons. The Court to whom the records and proceedings had as usual been circulated asked Mr. Basil Lang, the Advocate-General who appeared for Government: "Who advised Government to appeal in this matter?" Lang answered "Not I" and sat down. The appeal was dismissed.

In a prosecution for defamation, the complainant alleged that on a particular day, the accused in the company of two other persons went to the office of Messrs. Craigie, Lynch & Owen, Solicitors, and that the accused had there made a statement to Mr. Craigie which had been taken

down in writing and which the prosecution was desirous of having produced and put in evidence. Mr. Craigie was accordingly called as a witness but claiming professional privilege, he declined to say whether the accused had visited him on the day in question alleging that he had learnt the name of his visitor in the course of and for the purpose of his professional employment. The Chief Presidency Magistrate made a reference to the High Court on the subject. The High Court (Justices Candy and Fulton) held that where a solicitor claims privilege under Section 126 of the Indian Evidence Act, he is bound to disclose the name of his client on whose behalf he claimed the privilege. The mere fact that his client's name had been communicated to him in the course and for the purpose of his employment as solicitor by another client does not entitle him to refuse to disclose the name, unless it was communicated to him confidentially on the express understanding that it was not to be disclosed. A solicitor however was not at liberty without his client's express consent to disclose the nature of his professional employment. Section 126 of the Indian Evidence Act protects him from being compelled to disclose not merely the details of the business but also its general purport, unless it be known *aliunde* that such business falls within proviso I or II of the Section. (*I.L.R.* 18 *Bombay*, 264, April 4, 1893.)

BHAISHANKAR NANABHAI

vs.

L. M. WADIA & HIRALAL SAROJAYA

The limits of the privileges of Counsel were laid down in this case by a full bench consisting of Chief Justice Jenkins, and Justices Candy and Tyabji in 1899. L. M. Wadia, a Barrister in the course of a criminal trial before the Sessions Judge at Ahmedabad said as follows with regard to

Mr. Bhaishankar, a solicitor who appeared on the other side:—

> "Mr. Bhaishankar in consequence of a long standing enmity with the accused had been tampering with witnesses and getting up evidence to ruin the accused."

The Advocate-General presented a petition praying that disciplinary action should be taken against Wadia for having made this charge which was entirely unwarranted. Mr. Wadia claimed immunity by reason of the privilege accorded to an Advocate in the conduct of his client's case and urged that in any case he acted on instructions and without malice. After referring to the leading authorities on the subject of the immunity of judges and counsel with regard to anything said by them in the course of performing their duty, the Chief Justice observed that there was a sharp distinction between suits or criminal proceedings at the instance of the injured party and the exercise by the Court at the instance of the Advocate-General of its disciplinary powers. The reason to which the licence owes its original has no place in an answer to disciplinary jurisdiction set in motion by the Advocate-General on the ground that in the interests of the profession of which he is the head, he thinks the conduct of one of its members is such as to demand enquiry. A jurisdiction thus guarded need never stand in the way of a fearless discharge by an honourable Advocate of his duties towards his client.

As regards the duty of counsel in relation to prisoner's instructions, the Chief Justice quoted the following resolution passed by the Judges of the Queen's Bench Division in England:

> "That in the opinion of the Judges it is contrary to the administration and practice of the Criminal Law as hitherto allowed that counsel for prisoners should state to the jury as alleged existing facts matters which they have been told in their instructions on the autho-

rity of the prisoners, and which they do not propose to prove in evidence."

The Chief Justice further observed: "As the license of the Advocate has been so much discussed before us, I cannot leave this part of the case without reminding judicial officers that the licence creates a corresponding duty in them, the duty of keeping the exercise of that licence within its proper limits lest it should grow into a scandal." He further observed "No one can be more averse than I am to shackle the proper efforts of the counsel and it is only to keep pure the traditions of that most honourable profession that I alluded to these matters." He further said "In this country judges are explicitly and designedly armed by the legislatures with large powers and control as is apparent from Sections 150 and 152 of the Evidence Act which indicates principles that will be admitted to be sound by all honourable advocates and the public and which judicial officers should ever keep clearly before them."

In the result, the Court accepted the explanation of Mr. Wadia and discharged the rule (2 *B.L.R.* page 3).

POLITICAL ACTIVITIES

When Mr. Gandhi established the "Satyagraha Sabha" following the introduction of the Rowlatt Bills, certain lawyers practising in the Courts of the Ahmedabad District, among them being two Barristers, Jeewanlal Varajrai Desai and Vallabhbhai Patel, signed what was known as the Satyagraha Pledge by which they bound themselves in the event of the Rowlatt Bill becoming law, to refuse civilly to obey those laws and further promised that in that struggle, they would follow truth and refrain from violence to life, person or property. The District Judge reported this to the High Court recommending that suitable action be taken against those practitioners.

The High Court accordingly issued a notice why disciplinary action should not be taken against them and the

matter was heard by a full bench consisting of Chief Justice Macleod, Mr. Justice Heaton and Mr. Justice Kajiji in October 1919. I appeared for two of the respondents, and Jayakar and Govindlal Thakore appeared for the rest. Bahadurji, the acting Advocate-General, appeared in support of the notice. Chief Justice Macleod in delivering judgment said that while the Court had nothing to do with the political views of the respondents nor with expressions of opinion on their part however strong, it must be remembered that Advocates and Pleaders were a privileged class enrolled not only for the purpose of rendering assistance to the court in the administration of justice, but also for giving professional advice for which they were entitled to be paid by the members of the public and that their position, training and practice gave them immense influence with the public and their example must necessarily have effect on the public. He further said that the pledge involved the professional character of these practitioners. Their duty as such practitioners is to advise their clients to the best of their ability as to what the law is—not as to what it should be in their opinion. He was of the opinion that it would be impossible for them to keep their duties to the Satyagraha Sabha separate from their professional duty. He added, "A very sound principle to remember is that those who live by the law should keep the law." The Court did not take any action but gave those practitioners a warning that any further action would depend entirely on the developments, if any. The Court accordingly adjourned the notice indefinitely with leave to the Advocate-General to move for its restoration to the Board should occasion arise. (*I.L.R.* 44 *Bombay* 418.)

PROFESSIONAL MISCONDUCT

In 1934 the Advocate-General presented petitions alleging misconduct against three members of the Bar—Messrs. K. B. Bharucha, P. R. Bharucha, and M. R. Masani. K. B. Bharucha and P. R. Bharucha had been convict-

ed and sentenced by the Chief Presidency Magistrate for having between October 1, 1932 and January 1, 1933, managed and assisted the operations of the Bombay Provincial Congress Committee Emergency Council which had been declared unlawful by the Government of Bombay under the Criminal Law Amendment Act and for having taken a leading part in the publication of the *Congress Bulletin*. The charges against Masani were that he was the President of this 52nd Emergency Council of the Bombay Provincial Congress Committee which had been declared an unlawful association and that as President, he had announced and convened a meeting of that unlawful association at Chowpatty. The petitions after reference to a Committee of the Bombay Bar Council appointed by the Chief Justice in accordance with the provisions of the Bar Councils Act, were heard by Chief Justice Beaumont and Justices Rangnekar and Divatia.

The Court while holding that conviction for a criminal offence was evidence of misconduct and that the High Court had jurisdiction to take disciplinary action against advocates so convicted, stated that it was not the duty of the Court to impose penalties for misconduct unconnected with the exercise of the profession, which was either not punishable or had been or could be punished under the law of the land and where the ordinary law had enforced a penalty. The Court said that there was no reason why disciplinary jurisdiction vested in the High Court should be employed in aid of the criminal law, but where the offence for which a practitioner had been convicted by the Criminal Court involved moral turpitude, the Court had to see whether the practitioner had shown himself to be unworthy of the confidence of the Court and unfit to be entrusted with the business of his client. Being members of an unlawful association and in management of its affairs did not, the Court held, render them unfit for the exercise of their profession. The rule was accordingly discharged and no order as to costs was made. (36 *B.L.R.* 1136.)

The Advocate-General applied to the Privy Council for special leave to appeal. The Privy Council refused such leave but said that the observations of the High Court were too wide and that misconduct need not be in the practitioners' professional capacity and that conviction of a criminal offence was evidence of misconduct on which the High Court could take disciplinary action. (37 *B.L.R.* 722.)

THE DUAL SYSTEM

In the High Courts of Bombay and Calcutta, counsel on the Original Side can only appear when instructed by a solicitor. This system has evoked considerable criticism and from time to time its abolition has been advocated. If that were done, Advocates could take work direct from clients. I myself was in favour of this change at one time but my experience extending over more than 40 years has convinced me that the dual system conduces to methodical preparation of a case and its effective presentation.

The abolition of the dual system has been advocated by some on the ground that the costs on the Original Side which are heavy will thereby be reduced. That heavy costs are sometimes incurred in suits on the Original Side is not due to the dual system but is due to the anxiety of clients to secure the services of some leading counsel whose scale of fees is, by the operation of the law of supply and demand, high. If litigants want to have their litigation conducted at lower cost, it is entirely in their hands, provided they are satisfied with the services of less expensive counsel. In some cases, costs mount up because of the obstinacy of litigants who will not arrive at a reasonable compromise although advised by their solicitor and counsel to do so. On occasions, I had to put considerable pressure on some clients to make them arrive at a compromise which I thought would be in their interests and which would save them from ruinous litigation. In this matter, the Judges also can, within certain limits, play a useful part. If, where circumstances

so demand, the Court exercises a mild judicial pressure the parties may be saved heavy costs.

I remember a case in which the whole dispute between the parties had narrowed down to Rs. 1,200/- and the learned Judge patiently heard the case for ten days with the ultimate result that many thousands of rupees were spent by the parties in costs. In a case like that an attitude of strict neutrality and abstention from the use of a certain amount of pressure to make parties save themselves from ruination, is in my opinion misconceived.

SPECIALISATION AT THE BAR

In India there is no specialisation at the Bar as there is in England. An Advocate or Pleader has to deal with a case of Hindu Law, then a case of Company Law, Mercantile Law, Contract Law and so on. He has to switch off from one subject and apply his mind to another. If a question in engineering or medicine turns up, he has for the occasion to study the particular aspect of engineering or medicine affecting the case. This comes in the way of a practitioner devoting himself to a particular subject and becoming an expert in it.

I remember a case in which I had to make a study of a particular disease and its treatment. A Parsi had engaged the services of a nurse who was also a Parsi to nurse his wife who was ailing. The nurse attended on the patient for a long time. The wife died and some time after the nurse alleged that after the wife's death the man had given a promise to marry her and she filed a suit for damages for breach of promise of marriage. I appeared for the plaintiff nurse. The defendant admitted the promise but pleaded that he was not bound to keep the promise because he had discovered that the plaintiff was suffering from venereal disease. The onus being on the defendant to prove his allegation, he called as his witness a doctor who had treated her. In order to cross-examine him, I had to study the symp-

toms and treatment of the disease. I cross-examined him at great length and showed by reference to medical books that the symptoms he alleged he found were also symptoms of other diseases which were easily curable and not contagious and also that the prescriptions he produced were not necessarily applicable to the disease alleged. The doctor absolutely broke down in cross-examination. He was asked how he came to give the information to the defendant of his treatment of the plaintiff and the nature of the disease and thereby broke the confidence reposed in him by the patient. He had no explanation to give and the Judge remarked that no decent doctor would have given such information. While the law prevents a lawyer from giving evidence of any confidential information that he may have got from his client in the course of his employment, there is no such legal bar preventing a doctor giving evidence about what he may have learnt in the course of his employment. Although therefore a doctor may be compelled to give evidence in a court of law it is his moral obligation not to divulge to another person such information. The Judge disbelieved the doctor and awarded Rs. 8,000 damages.

CORDIAL RELATIONS WITH THE BAR

My personal relations with the members of the Bar have been very cordial. On many occasions, they have entertained me at dinner and I have made many friends among them. The Bar Library is the one spot where I find it delightful to pass my time whenever I can. It is a place to which the laws of libel and slander and sedition do not apply and judges, practitioners and the Government and their measures are freely discussed without any restraint. The jokes that I enjoy most in that privileged room are jokes on myself.

In February 1937, I completed fifty years of my career as a lawyer. The Bar celebrated the event by entertaining me at dinner and raising subscriptions for my portrait which has been placed in the High Court Library. It was



unveiled by Sir John Beaumont, the then Chief Justice. The surplus balance of the fund raised was handed over to the Bombay Bar Council for awarding annually a gold medal to the student who stood highest in the Advocate's examination. The Bar also passed the following resolution:

> "The members of the Bombay Bar offer their felicitations to Sir Chimanlal Setalvad on the completion of 50 years of his career as a lawyer and places on record their appreciation of the services rendered by him in maintaining the dignity and privileges of the Bar and in setting a high example of fearless advocacy."

The Times of India in its issue of February 20, 1937 referred to this occasion in the following terms:

> "Sir Chimanlal Setalvad completes his Golden Jubilee in the legal profession this week. Seniority at the Bar is counted not so much by the number of years as by the number of briefs, yet fifty years in the active practice of a learned and laborious profession is a noteworthy event in the life of any individual. Professional success came to him almost from the start and he soon made, and has throughout maintained in spite of multiple and many-sided activities, a unique and honourable position in the profession. The secret of his popularity and unfading youthfulness lies in the spirit and temper in which he has taken his public and professional work. Cool and composed, placid and unpurturbed, he everywhere breathes an atmosphere of repose and friendliness; he takes the trials and triumphs of professional contests in an equable temper. For him, there is no giddy height of elation and no gloomy depth of depression.
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> "Both within and outside his profession, Sir Chimanlal has lived a broad rather than an intense life. What has secured him warm place in the regard and esteem of his colleagues is his breadth of outlook and friendliness of spirit, along with a certain simplicity of nature

which enables him, in spite of all honours and distinctions that have come to him, to mix easily with all and sundry and take a genuine interest in the little affairs of lesser men. Politically, Sir Chimanlal belongs to a generation almost extinct today. He is among the few survivors of that school of realists and humanists who strove to rear the fabric of Indian politics upon the broad foundations of tolerance and understanding, sweet reasonableness and ordered progress. He has endeavoured to keep the public life of this country above the narrow bigotry of latter day nationalism, and he is not among those who believe in stimulating national sentiment at the cost of racial bitterness."

At all Bar dinners, members always call upon me to speak. When Bomanji Wadia on his retirement from the Bench was entertained at dinner by the Bar, one part of the speech that I made elicited great applause and laughter. What I said was something like this: "Mr. Wadia with all his intellectual equipment cannot be expected to remain idle and so one wonders what he will do. Will he start an agitation for Parsistan? No, he is much too sensible to do anything of that sort. Will he join the Non-Party Conference which is a party of all leaders and no followers? No, he would not do that. Will he join the Liberal Party which is a Party of many leaders and few followers? I don't think he will. Will he join the Congress? If he does, he will have to go to jail and then get ill which will lead to his release. When so released, if he left the Congress he would be maligned as a traitor."

Munshi who had been recently released owing to severe illness and had resigned from the Congress, I believe, enjoyed the joke very much.

LEGAL EDUCATION IN BOMBAY

THE state of legal education in Bombay was very unsatisfactory for a long time. Students who having passed the Matriculation examination had joined any Arts College were allowed to fill in terms at the Government Law School. Students who thus joined the Law School were busy with their Arts studies and had no interest in the lectures delivered at the Law School, for they could appear for the LL.B. examination only two years after taking their B.A. degree. So, it happened that by the time a student took his B.A. degree he had finished his attendance at the Law School and it was after that that he really began his studies in law. I remember when I was a resident student at the Elphinstone College at Parel, half a dozen students used to form a combine and each one went in turn to the Law School and got presence marked for all the six. As the students had no interest in the lectures, the professors naturally also lost all interest in their work. Moreover, the appointments for the professorships of the Law School were not always made on merits but for making provision for young barristers struggling at the Bar. There were only three professors and there were more than 400 students.

In order to remedy this unsatisfactory state of things, some of us conceived the idea of founding a private Law College. A Managing Board was constituted with Mr. Justice Badruddin Tyabji as Chairman and Narayan Chandavarkar, myself, Rustom K. R. Cama Solicitor, and N. V. Gokhale a pleader on the Appellate Side, as members. We secured the services of six competent professors and applied to the University on November 15, 1897, for the affiliation of this institution which was styled "The Bombay College of Law". Justice Candy, a Civilian Judge of the High Court who was then the Vice-Chancellor of the University, started the bogey of sedition and minuted that he apprehended that the professors of the proposed

College might teach "sedition to the pupils" and was therefore against affiliation of the College. Several members of the Syndicate including Justice Ranade, Dr. Mackichan, Wasudev Kirtikar and others vehemently disagreed with the Vice-Chancellor. Considerable time was lost in the controversy whether the Senate had the power to recommend affiliation to Government or whether Government alone had the right to affiliate under Section 12 of the Universities Act. Ultimately the Syndicate decided by a majority to recommend affiliation to the Senate.

When the matter came before the Senate on June 27, 1898, various attempts were made to smother the proposition. When the proposition for affiliation was moved, Starling, a barrister, proposed that the Senate pass on to the next business. This was negatived by a large majority. Starling still persisted in his attack and moved that the Syndicate be asked to review their decision. The Senate, however, rejected Starling's motion and resolved to recommend affiliation to Government.

Government who were very unwilling to allow the new College to come into existence, promptly appointed a Committee with Giles, the Director of Public Instruction, as Chairman, to enquire into the working of the Government Law School and to make recommendations on the changes required to be made. The Committee made its report recommending drastic reorganisation of the School. Government thereupon reorganised the Law School mainly on the lines recommended by the Committee. All this time from June 27, 1898 to February 1899, Government pigeon-holed the recommendation of the Senate for the affiliation of the new College. On February 25, 1899 Government wrote to the Senate refusing affiliation of the College and said that in view of the improvements made in the Government Law School, it was inexpedient to establish a new College. Now there are five Law Colleges in the Presidency.

EXECUTIVE AND JUDICIAL FUNCTIONS —UNHOLY COMBINATION—

FOR the purposes of revenue administration, the Presidency of Bombay is divided into three divisions, Northern, Central and Southern, each in charge of an officer who who is called Commissioner. Under the Commissioners are Collectors of Districts. Under the Collectors are Assistant Collectors and Deputy Collectors and under these officers are what are called Mamlatdars in charge of various talukas. Under the Mamlatdars are Aval Karkuns. The Aval Karkuns whose salaries range from Rs. 40 to Rs. 60 a month, are invested with criminal jurisdiction of third class magistrates. The Mamlatdars are first or second class Magistrates, and Assistant Collectors and Deputy Collectors are First Class Magistrates. The Collector of the District is also the District Magistrate, and besides having the powers of a First Class Magistrate, he hears appeals in criminal cases decided by the Mamlatdar and Aval Karkun Magistrates. The Collector-cum-District Magistrate is also the head of the police in the district, and important prosecutions are launched by the police with his sanction and approval.

The appointments, postings, promotions and transfers of these executive officers who also exercise judicial functions are in the hands of the Executive of the Presidency. The judicial work of these officers does not occupy more than one-eighth to one-fourth of their time. Their principal concern is their executive work of collecting revenue and maintaining order. The habit of mind that these officers necessarily acquire as executive officers is not conducive to the balanced and detached frame of mind essential for judicial officers. Moreover, the subordinate magistrates are naturally anxious to secure the good opinion of the higher revenue and police officers for their advance-

ment. Similar arrangements also obtain in other Presidencies with some variations in duties and designations.

The police authorities in their zeal consider Magistrates who convict ih prosecutions started by them as more efficient than those who acquit. In the matter of appointments, promotions and postings of the subordinate magistrates the Executive acts on the recommendation of the Collector-cum-District Magistrate. Moreover, the Assistant and Deputy Collectors and Mamlatdars have to tour in the areas under their charge and it often happens that witnesses and accused in criminal cases have to follow these magistrates from place to place. In some big towns, there are Resident Magistrates who do only magisterial work but they also are subordinate to the Collector-cum-District Magistrate and their promotion also depends upon the opinion of the Collector. That some Collectors judge efficiency of magistrates and judges by the percentage of convictions is not a mere surmise. I know that one District Magistrate had the audacity to write to an Indian District and Sessions Judge that in the latter's Court, there were too many acquittals. The Judge reported this to the Chief Justice and the Collector was admonished for his action.

Owing to this combination of executive and judicial functions the liberty of the subject is imperilled and the public demand is that magistrates should be purely judicial officers and their appointments, postings and promotions should rest with the High Court.

The question of the separation of executive and judicial functions in this country is as old as the hills. Raja Ram Mohan Roy, the great Bengali patriot and reformer, in giving evidence before a Parliamentary Committee in London about 85 years ago, included in his memorandum the desirability of this reform. In 1886-7 a deputation from the Indian National Congress headed by Dadabhai Naoroji waited upon Lord Dufferin, the then Viceroy and Governor-

General of India, and pressed for this reform. Lord Dufferin on that occasion called it "a counsel of perfection". The Congress at its annual session year after year repeated the resolution in favour of the separation of judicial and executive functions. Lord Kimberley and Lord Cross, Secretaries of State for India, pronounced in favour of this reform. At the sixth Bombay Provincial Conference held at Ahmedabad in 1893, a memorandum on this question was submitted by Pherozeshah Mehta and a Committee was appointed to work out a scheme for this separation in the various districts of the Presidency. In July 1899, a comprehensive Memorial on the subject was submitted to Lord George Hamilton, the then Secretary of State for India, which was signed amongst others by Lord Hobhouse, Sir Richard Garth, retired Chief Justice of Bengal, Sir Richard Couch, Sir Charles Sargeant, retired Chief Justice of Bombay, Sir William Markby, Sir John Phear, Sir John Scott, Sir Rowland Wilson, Sir William Wedderburn, all retired Judges of High Courts, and by others. In 1908, Sir Harvey Adamson, the then Home Member of the Viceroy's Executive Council said: "The Government have decided to advance cautiously and tentatively towards the separation of judicial and executive functions in those parts of India, where the local conditions render the change possible and appropriate." In 1913, a public meeting of the citizens of Bombay was held at the Framji Cowasji Institute under the auspices of the Bombay Presidency Association, when a resolution urging the speedy inauguration of a scheme for such separation was adopted. The United Provinces Government had appointed a Committee presided over by Sir Louis Stuart, Chief Justice of the Lucknow Chief Court to prepare a scheme for separation. The Committee submitted its report but it was pigeon-holed by Government, and nothing further was done.

At the meeting of the Bombay Legislative Council on October 1, 1921, Rao Bahadur Chitale moved a resolution that executive and judicial functions be separated by

entrusting criminal cases to the subordinate judges. Mr. Hayward (later Sir Murice Hayward), the Home Member, gave an assurance that Government would go into the whole question at an early date and asked the mover to withdraw the resolution, which he declined to do. When the resolution was put to the vote, an equal number of members voted for and against the resolution. The President, Sir Narayan Chandavarkar, gave his casting vote against the resolution on the ground that Mr. Hayward had on behalf of Government given an assurance that they would go into the whole question at an early date. In 1922 the resolution was again moved and was carried.

With this history of the question, the public expected, when the Congress ministries were formed in some provinces in 1937, that they would promptly take up this much delayed reform, but to the great disappointment of the public, they avoided taking any steps in that direction on the plea that as popular governments were in power, the executive would be properly controlled by them and the executive officers exercising judicial functions would not go wrong.

Referring to this question in the Madras Legislative Assembly, Mr. C. Rajagopalachari said: "Now that Congress is in office, we will see that executive officers will not go wrong and we shall control them." What ignorance this utterance shows of the real issue and of human psychology? How is it possible for officers who are occupied in doing executive work for more than three-fourths of their time and have thereby acquired the executive mentality with its rough-and-ready methods, to switch off to a judicial mentality during the remaining one-fourth of their time? When C. R. says "we shall control them", he lays bare the very evil that people want to eradicate. They do not want the judiciary to be "controlled" in any manner by the executive.

Really speaking, with a popular Government having a majority of the Legislature at their back, there is greater

need of the judiciary being entirely independent of the executive. The more democratic a government is, the greater the need of an independent judiciary. This principle is illustrated by the completely independent position of the judiciary in England. All through the many years of bureaucratic rule, one excuse or another was put forward for not carrying out this reform though its necessity was always accepted. The Congress Government went back entirely and denied the very necessity of this reform.

In the various schemes put forward from time to time, it has been shown that such separation will involve very little additional expenditure if at all. The criminal work at present done by the magistrates who are executive officers can be easily transferred to subordinate judges whose numbers may be increased while a corresponding decrease may be made in the number of revenue officers by a rearrangement of areas under their charge. Various instances have come to light of the evils and miscarriage of justice flowing from this combination of functions. But as against the cases that come to light there must be many others that remain unknown.

Further, the subordinate judiciary may have to deal with cases where the action of the executive may be questioned, and unless the judiciary is completely free from any control and influence of the executive, the administration of justice can never be pure.

The following are some recent glaring instances of oppression of members of the public resulting from the combination of executive and judicial functions.

In 1938-9, Mr. Joshi, a leading pleader of Athni in the Belgaum District, was charged with outraging the modesty of a woman. Mr. Joshi alleged that the case was fabricated against him by the Sub-Inspector of Police owing to personal enmity. He also applied for the examination of certain witnesses whom the police had not examined. When the Magistrate granted his application, the Superintendent

of Police wrote a letter to the District Magistrate making aspersions against the Magistrate's impartiality and the District Magistrate transferred the case to another Magistrate. Mr. Joshi applied to the High Court and the Court severely commented upon the action of the Superintendent of Police and the District Magistrate and transferred the case to another district altogether observing that the action of the District Magistrate was calculated to undermine the prestige and independence of the trying Magistrate.

The Dharwar Magistrate to whom the case was transferred was, before he went to Dharwar, a supernumerary Magistrate in the Belgaum District and was sitting with the District Magistrate when the transfer order was made. On Mr. Joshi's application, the case was transferred to another Magistrate who acquitted Mr. Joshi and held that the complaint was false, groundless and malicious. It is obvious that if the Belgaum Magistrate had been a purely Judicial Officer and only subordinate to the Sessions Judge and the High Court and not to the District Magistrate, all this harassment of the innocent would not have taken place. In this case, Mr. Joshi had the grit and the means to fight for two years to vindicate himself but other people not so fortunately situated must be suffering injustice under the present system.

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One Sadashiv who had been arrested in December 1942 was remanded on February 6, 1943 for a fortnight. In making this remand the provisions of the Criminal Procedure Code were not complied with. The case was ultimately transferred to the City Magistrate, Poona. On July 13, one month after the City Magistrate took cognizance of the case, the District Magistrate wrote to the Public Prosecutor asking him not to proceed with the case until investigations in another case had been completed. No application for such adjournment was judicially made to the City Magistrate in the presence of the accused or his legal adviser. The Public Prosecutor merely wrote a note to the City Magistrate send-

ing a copy of the instructions he had received from the District Magistrate, and the Magistrate made the order behind the back of the accused. The accused was thus indefinitely detained till the High Court taking cognizance of the case ordered his release.

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About the same time, a Bench of the Calcutta High Court consisting of the Chief Justice and two other Judges made very strong remarks against the interference of the Chief Minister in the course of justice by writing letters to the District Magistrate in connection with a case pending before him. The Chief Minister who had by this time gone out of office, wrote to the papers disclaiming any interference in the course of justice on his part but alleged that the Home Department had issued confidential circulars to the Magistrates who had been trying cases under the Defence of India Rules and various Ordinances. If this is correct, it shows the extent of the evil proceeding from the subordinate judiciary being under the control of the Executive.

The tendency of the executive to regard the judiciary as a sort of obstruction to their activities is apparent from the manner in which during the War period the executive have on occasions acted. Their action cannot but lower the position and prestige of the judiciary. In several cases, the executive, after having prosecuted people under the ordinary law and failed to secure a conviction, have resorted to the Defence of India Rules to put the acquitted persons in prison.

In the early part of 1943, some of the people who were tried in the Sessions Court of Thana and acquitted by the Judge agreeing with the jury, were re-arrested by the police under the Defence of India Rules as soon as they emerged from the Court House. Similarly in Bombay, a number of persons who were acquitted by a Special Tribunal presided over by Mr. Justice Lokur, were immediately arrested again

under the Defence of India Rules. In a trial held in the Criminal Sessions in Bombay, Mr. Justice Rajadhyaksha and the jury acquitted the accused but he was re-arrested under the Defence of India Rules as soon as he came out of the Court. Similar instances have occurred in other presidencies also. Cases of this sort tend to bring the administration of justice into contempt. It also lessens the sense of responsibility in the executive, who are naturally encouraged to launch prosecutions on insufficient evidence because they think that if the Court does not convict the accused they can still put him in prison indefinitely under the Defence of India Rules. In this connection, the utterance of the Chief Justice of the Allahabad High Court is significant. He is reported to have said that the Defence of India Rules had paralysed the High Court and that in the particular instance of Mr. Baijnath, a leading pleader of Agra, who was appearing for many political detenus, he felt that the police had thought it best to get the lawyer behind prison bars. The Chief Justice's feeling may be right or wrong, but it indicates what the judiciary feel regarding the action of the executive.

CONTEMPT OF COURT

UNDER clause 15 of the Letters Patent of the Bombay High Court, no appeal is allowed against any judgment passed by a single Judge in the exercise of his criminal jurisdiction. With regard to cases of contempt of court, a distinction is made between contempts of a civil nature and contempts of a criminal nature. Disobedience by a party to a suit, of the orders or injunction of a Court is considered contempt of a civil nature. On the other hand, contempt of court committed by a stranger to any suit or proceeding by reason of such stranger interfering with the process of the Court as well as any act committed by a party to a proceeding or by a stranger which would bring the administration of justice into scorn is considered contempt of a criminal nature.

With regard to contempts of the second character, there is no appeal against the orders of a single judge in the High Court and the only remedy to the person affected is an appeal to the Privy Council after obtaining the necessary certificate from the Appellate Bench. This legal position works very harshly in some cases.

I remember one case of such hardship in which I appeared for the alleged offender. A woman had bought a property at Lonavla at a public auction held by the Subordinate Judge's Court at Poona in execution of a mortgagee's decree and the woman having paid the purchase money was put in possession of the property. She was in such possession for a considerable time. Later, a suit was filed in the High Court for the administration of the estate of a deceased person and this property was mentioned as forming part of that estate by the parties to that suit. The Court appointed a Receiver of all the properties including this particular property at Lonavla. The Receiver's agent

went to Lonavla to take possession of the property and in the absence of the ostensible owner, obtained from the *mali* the key of the bungalow, opened it and entered into possession and put his own lock on it. When the woman after a few days went to Lonavla and was told by the *mali* what had happened, she removed the lock put by the Receiver's Agent and occupied the premises. On this, the Receiver obtained a rule from the Court against the woman for contempt of court. The solicitor of the woman instructed me to appear to show cause.

One of my contentions, if I had been heard, would have been that when the Receiver found that somebody else was in possession of the property claiming to be its owner, he had no right to take forcible possession of the premises but should have filed a suit to recover possession from the woman who was in possession. Whether my contention was right or wrong, I was entitled to be heard to show cause why my client should not be committed for contempt. When I appeared before the learned Judge and began to address him, he said: "I cannot hear you because your client is in contempt and your client must restore possession to the Receiver at once." In vain I argued that I had appeared before the Court to show cause why my client should not be committed for contempt and I was entitled to be heard to show that there was no contempt. The learned Judge prejudged that my client had committed contempt without giving me a hearing to show that there was no contempt. As there was no immediate remedy by appeal to the Appeal Court, my client had to surrender and give up her possession which she had obtained from the Poona Court as purchaser at a court sale.

In a recent case, a litigant who was arguing his own case, in answer to an observation by the opposing counsel that he (the litigant) was misleading the court, the litigant rejoined: "I do not keep anything back at all. My fault is that I disclose everything unlike members of the bar who

are in the habit of not doing so and misleading the court." A strong protest was made to this statement by the opposing counsel and the litigant immediately apologised and expressed his regret for having used the unfortunate expression in the heat of the argument. The litigant had also made observations derogatory to the Taxing Master. On the next day, the opposing counsel drew the attention of the court to the utterances of the litigant with regard to the Bar and the Advocate-General appeared and moved the Court to punish the appellant for contempt in using the language he had used regarding the Bar. The litigant again apologised for what he had said. At this stage, the question as to the words used regarding the Taxing Master was raised.

On the following day, the learned Judge held that both in his reflections on the Bar and on the Taxing Master the litigant was guilty and committed him to prison for three months and ordered him to pay a fine of Rs. 1,000. The next day, on the application of the litigant, the sentence of imprisonment was reduced to one of eight days. The litigant suffered this imprisonment as there was no appellate tribunal in the country to hear his appeal or let him out on bail. He had to apply to the Appeal Court for leave to appeal to the Privy Council, which was granted. The Privy Council allowed the appeal with costs and quashed the order of the learned Judge.

Cases like these show the desirability of allowing an appeal in all cases of contempt to the Appeal Court. This can be effected by an amendment of clause 15 of the Letters Patent by adding suitable words to make it clear that orders in contempt of court proceedings will not be deemed to be orders in the exercise of criminal jurisdiction for purposes of appeal. This can also be done by adding a section in the Contempt of Court Acts XII of 1926 and XII of 1937 allowing an appeal.

MANAGING CLERKS

When I began to practise on the Original Side, I came in contact with a class of Managing Clerks in Attorneys' Offices of those days. There was Anandrao in the office of Little & Co., Narayen with Craigie Lynch and Owen, Entee with Crawford Bailey & Co., and Rustomji Sethna with Edlow, Gulabchand Wadia & Company. The last one was known in legal circles as Rustomji Macfarlane. The name of Macfarlane was applied to him because he was a favourite of Macfarlane who had founded the firm. The Managing Clerks of those days who had considerable knowledge of law and practice played an important part as many of the clients did not know English and required some one as an intermediary between them and the European Solicitors. This class of Managing Clerks made large fortunes. Their clients had even greater confidence in them than in their masters. With regard to one of them it was said that when any draft of a letter or pleading was made by any of the partners of the firm of Solicitors, the clients used to take the draft to the Managing Clerk for his approval and he in order to impress the clients, made alterations in various places in the draft, but there were standing instructions to the copyists or typists that the original draft was to be fair copied or typed without the alterations! This class of Managing Clerks has now disappeared.

LAW'S DELAYS

When I joined the Appellate Side bar in 1887 there was great congestion of work. Appeals did not come up for hearing till three or four years after they were admitted. I was told that in the time of Sir Michael Westropp, judgments in some important and complicated cases were delivered by him months after the hearing was finished. I had heard an amusing story in this connection. There was a Civil Revision application from a judgment of a Court of Small Causes in a mofussil town. The application was heard by Westropp Chief Justice and another judge and

judgment was reserved. Judgment was never delivered and apparently everybody forgot all about the case. Sir Michael Westropp had retired and Sir Charles Sargent had succeeded him as Chief Justice. One day when the drawers of the Chief Justice's table were cleared, the papers of that revision application and a sheet of paper on which Westropp Chief Justice had written a few lines of the judgment he intended to deliver were found. On that, enquiries were made whether the Small Causes Court concerned desired the revision application to be disposed of. That court reported that all the parties in that case were dead and therefore nothing further was necessary to be done.

In the Dakore Temple case the appeal against the decree of the District Judge of Ahmedabad was filed in 1883. The appeal came on for hearing and was decided in the middle of 1887. An appeal to the Privy Council was filed in the latter part of 1887. The preparation of the printed record to be sent to the Privy Council took several years and the appeal was heard by the Privy Council some time in May 1899. Thus four years elapsed between the filing of the appeal and its hearing by the High Court and twelve years elapsed between the decision of the High Court and the hearing of the appeal by the Privy Council.

It is very aptly said that justice delayed is justice denied. This is illustrated by the manner in which criminal cases are dealt with in the courts of Presidency Magistrates in Bombay. A contested case is never heard from day to day but is heard at considerable intervals and even then only a fraction of a day is given to each hearing. The result is that cases drag on for many months and some times for some years. One can well imagine the trouble and anxiety that the accused have to suffer as well as the heavy burden of costs that falls upon them by way of counsel's or pleader's fees. The hearing of cases by driblets also results in further prolonging the disposal of cases, because when a week or even a longer period elapses

between various hearings, some time is always lost in recalling what had gone before. It is also unfair to the trying magistrate himself that he has to remember and carry in his mind the facts of several cases that sometimes drag on for weeks and months.

In a recent case, the hearing began in August 1942 and ended in October 1944, that is it took more than two years. The case was taken up during this interval on 116 different occasions and took in all 160 hours. Only a few hearings occupied two hours at a time while on many occasions, the case was heard only for one hour and a half or one hour, and sometimes for even half an hour or quarter of an hour. The accused was defended by lawyers and the prosecution had engaged special counsel to whom substantial fees had to be paid. Both the prosecution and the accused must have spent many thousands of rupees on this case. In addition, one can well imagine the anxiety and suspense that the accused had to suffer for a period of two years and a half at the end of which he was acquitted. If the case had been heard by the magistrate for full five hours from day to day, it would have taken 32 days and perhaps a shorter period.

The hearing of what is known as the House Collapse Case (King Emperor vs H. A. Noorani & Co) began in October 1943 and ended in March 1945 thus occupying 18 months.

Another case in which the whole future of a public servant is involved has been going for an equally long period and is still unfinished. It is indeed cruel to inflict on the accused the mental anguish and anxiety that he must be suffering, not to speak of the enormously heavy cost of defending himself.

A simple case of hoarding grain in contravention of the Ordinance in that behalf and in which there was not much dispute as to facts lasted from September 1943 to July 1944.

It is not at all unusual that even ordinary cases of cheating, breach of trust, etc., which if taken up from day to day, would last for two or three days, hang on for months and months. There is no reason why by a proper distribution of work, it should not be possible when once a case is called on to take it from day to day and finish it. I have never been able to understand why this cannot be done.

It is said that magistrates have to take up every day what are called miscellaneous police cases. There are 13 stipendiary Presidency Magistrates and a host of honorary Magistrates. There should be no difficulty in the way of so distributing the work between the various courts as to make it possible for cases being heard from day to day till they are finished. Whatever the reasons or difficulties there may be, preventing cases from being taken up from day to day, they must any how be surmounted in the interests of the general public. On several occasions, the High Court have recorded their disapproval of the delays in the disposal of criminal cases in Bombay. It is high time that both government and the High Court should take immediate steps to overhaul the whole system of criminal justice in Bombay and put an end to the scandal of criminal cases lasting for several months and as in some of the cases above referred to, for years.

PART 3

THE BOMBAY MUNICIPAL CORPORATION

3. THE BOMBAY MUNICIPAL CORPORATION

I STOOD for election to the Bombay Municipal Corporation at the general election held in 1892 from the Girgaum Ward and was elected. At the next general election, I lost the seat. On a casual vacancy occurring among the members elected by the Justices of the Peace, I stood and was elected in 1899. Subsequently, I represented the University of Bombay in the Municipal Corporation right up to 1920 when I resigned on my accepting the office of Judge of the Bombay High Court.

When I got more busy on the Original Side of the High Court it became difficult to attend the meetings of the Corporation which ordinarily began at 3 p.m. on Mondays and Thursdays. I therefore attended the meetings of the Corporation whenever it was possible to do so. Under these circumstances, I would not have stuck to my seat in the Corporation but for my great interest in the work of the Schools Committee whose meetings were always held in the evening.

In the year 1907, a determined effort was made by a certain coterie to oust Pherozeshah from the Corporation and at the general election by Justices, by powerful canvassing, they succeeded in doing so. Their object in doing this, they professed, was to break what they called the domination of the Corporation by Pherozeshah. The result was that Pherozeshah acquired much greater influence not only in the Corporation and the City of Bombay but throughout India. The matter went to the Small Causes Court and the High Court, and ultimately Pherozeshah was declared elected. Full particulars of this heated controversy which

caused unusual excitement in Bombay for many months will be found, in the "Caucus Case" under the heading "Some Cases," in Part "The Law."

PRINCE OF WALES' VISIT TO INDIA IN 1905

It was announced that the Prince and the Princess of Wales would be visiting India in November 1905. When the election of the President of the Bombay Municipal Corporation was to be made in the beginning of April 1905, the members of the Corporation felt that the City on the occasion of the Royal visit should be represented by Pherozeshah Mehta and he was enthusiastically elected as President by the unanimous vote of the House. The Prince was to land on November 9, and the Corporation resolved to present an address to Their Royal Highnesses at the Bunder. Pherozeshah as President was very particular that the position of the Corporation as representing the City should be fully recognised. When in 1875, the then Prince of Wales came to Bombay, the Chairman of the Corporation had been given a prominent place in the reception of His Royal Highness on the steps of the Apollo Bunder.

On this occasion, the Municipal Secretary under instructions of Pherozeshah invited the attention of Government to the said precedent and expressed the hope that it would be followed. Government, however, took no notice of this communication and a Press Note was issued about the Reception of the Prince in which the President of the Corporation, the Municipal Commissioner and the Sheriff of Bombay were not included among those who were to receive Their Royal Highnesses at the landing steps at Apollo Bunder.

There was great indignation aroused at this treatment and the Corporation felt that a deliberate slight had been offered to it and through it to the City. An informal meeting of the members of the Corporation was held and it was resolved to convey to Government the feelings which their

action had aroused. The situation was tense and there was considerable speculation as to what would happen if Government did not pay heed to the representation of the Corporation. Some members threatened that when the Corporation met, at the Bunder to present an address to the Royal Personages, they would propose an adjournment of the meeting. On November 8, a day previous to the arrival of Their Royal Highnesses, another informal meeting of the Corporation was called for that evening to consider the situation. In the afternoon, Mr. Edgerley, the then Chief Secretary to the Bombay Government, called on Pherozeshah at his residence to discuss the matter. Pherozeshah at that interview plainly gave Mr. Edgerley to understand the serious consequences that would follow if the wishes of the Corporation were disregarded. A little before the appointed time for the meeting, a message came announcing the capitulation of Government. Pherozeshah at the informal meeting tactfully soothed ruffled feelings and the incident ended.

KING'S VISIT

It was announced early in 1912, that the late King George V and Queen Mary were to come to India and a grand Durbar was to be held at Delhi where King George was to be proclaimed Emperor of India. As the President of the Bombay Municipal Corporation would in the ordinary course read the address of welcome to the Royal visitors on behalf of the Corporation, there was considerable discussion among the members of the Corporation as to who should be elected President for the year 1912-1913.

According to the usual practice, it was the turn of a Hindu to be elected as President, but many members thought that this convention should give way under the peculiar circumstances of that year, and that on this unique occasion, Pherozeshah should again represent the City and he agreed to stand for election. Manmohandas Ramji put himself forward as the Hindu candidate. Sir Sasson J. David having the ambition to read the address to the King

also put himself forward as a candidate and got support from officials and members of the European community. A keen contest followed and the result was that Pherozeshah got 27 votes, David 26 and Manmohandas 12. This was the fourth time that Pherozeshah became President of the Corporation. The reactionary element discomfited by this result, later started an intrigue to diminish to a certain extent the glory that had come to Pherozeshah by this election. When the time for the arrival of the King approached, the idea was started that an address should be voted to the King by a public meeting of the citizens of Bombay and that such citizens' address should be presented at the Apollo Bunder and that the Corporation address should be received later at the Corporation Hall. At a luncheon party given by Shapoorji Bharucha who was then the Sheriff of Bombay at which I was present, he said that he had an interview with the Governor and had received from him "a mandate" that a public meeting should be called for the above-mentioned purpose. Pherozeshah and others who were at the lunch entirely disapproved of this move to put the Corporation in the background. It was conveyed to the authorities that if this move of the citizens' address was persisted in and the position of the Corporation as representing the City was attempted to be undermined, the Corporation would be driven to decide to give no address to the King. This threat brought those who were sponsoring this sinister move to their senses and Pherozeshah and the members of the Corporation presented the Address of Welcome to the King at the Apollo Bunder.

SCHOOLS COMMITTEE

Under the Bombay Municipal Act of 1888, the cost of primary education in the City of Bombay was borne in certain proportions by the Corporation and the Government of Bombay, the Corporation paying such portion of the maintenance of the police in the City as Government from time to time determined. In practice the result was that the Corporation were made to bear a disproportionately high

percentage of the heavy cost of the police, while Government contributed comparatively lightly towards the expenditure on education.

As the cost of primary education was shared by the Corporation and Government, the administration of the primary schools in Bombay was placed in the hands of what was then called the Joint Schools Committee. On this Committee, the Corporation was represented by some members of the Corporation elected for the purpose and others were nominated by Government. The Corporation on the other hand had no control over the police although they bore greater part of its cost.

I was at the beginning nominated by Government to the Joint Schools Committee. The Corporation were making persistent representations for the removal of the burden of police charges and ultimately by the enactment of the Police Charges Act of 1907 the Corporation took over the entire cost of primary education in the City and the Government took over the burden of the entire cost of the police. Thereafter, the control of primary education in the City was placed in the hands of the Schools Committee which was entirely elected by the Corporation.

When this change took place, the Corporation elected me to the Committee and I was re-elected from time to time till 1920, when I resigned my seat on the Corporation on being appointed a Judge of the High Court. In 1903 I was elected Chairman of the Schools Committee and was re-elected year after year for an unbroken period of 17 years. During that period, many reforms were introduced and several good buildings were erected for housing some of the schools, Government contributing partially to the cost. When Gokhale introduced in the Imperial Legislative Council a bill for free and compulsory primary education, the opinion of the Corporation was invited and the Committee appointed to consider the matter with me as one of the members pronounced strongly in favour of it.

GORDHANDAS SUNDERDAS MEDICAL COLLEGE

By a Consent Decree in the suit filed by the Advocate-General against Gangabai, widow of Gordhandas Sunderdas and Chaturbhuj Gordhandas, the adopted son of Gordhandas Sunderdas, particulars of which are given under the head "Some Cases" in Part "The Law" a sum of Rs. 20 lakhs was set apart for charities. Out of this sum, after making provision for the specific charities mentioned in the will of Gordhandas, a balance of Rs. 14 lakhs was available for founding any charity at the discretion of the trustees who were appointed by the Court. I was one of the trustees so appointed and have ever since continued to be a trustee and also Chairman of the Board of Trustees.

The trustees in consultation with the Advocate-General decided to utilise the surplus amount for the foundation of a medical college in the City of Bombay. For many years, the Grant Medical College and the J. J. Hospital had been the preserves of the I. M. S. and specially of the European members thereof, and the independent Indian medical profession in the City had been excluded from the staff of the College and Hospital. There was considerable agitation for a long time against this monopoly. The late Dr. K. N. Bahadurji had taken the lead in the agitation against the exclusion of the Indian medical profession. After the appointment of Trustees by the Court, I discussed the matter with Pherozeshah Mehta and he suggested that an offer of an endowment should be made to the Bombay Municipal Corporation for the foundation of a college to be attached to the K.E.M. Hospital which was about to be established, one of the conditions of the offer being that the staff of the College should be recruited entirely from the independent Indian medical practitioners. If this condition was accepted, it would automatically follow that the staff of the Hospital would have to be chosen from the independent Indian medical practitioners, because the members of the Hospital staff would be also professors of the College.

D. N. Bahadurji was then acting as Advocate-General and he and the trustees by the letter of Messrs. Payne & Co., dated October 12, 1915 made the offer as above. The Corporation welcomed the offer and referred the matter to a Committee. In the Committee there was considerable discussion over the condition that had been laid down about the staff of the College. There were some members who took the view that the restriction imposed would disable the Corporation from obtaining the best qualified staff. The majority of the Committee, however, was in favour of accepting the condition and they so decided. A few days after this decision was arrived at, some members of the Committee supported by Mr. Cadell, the Commissioner, called a fresh meeting of the Committee to reconsider this point. I could not be present at that meeting as I had gone out of Bombay for professional work. In my absence, the Committee by a narrow majority, reversed their former decision in favour of the condition. On my return I arranged for a fresh meeting of the Committee and in the result the original view was accepted. Some dissenting minutes were appended to the report. Major Liston, the head of the Haffkine Institute was one of the chief opponents. I approached the Director-General of Medical Services and asked him to use his influence with Major Liston. He wrote to Liston sending me a copy of his letter. The letter ran as follows:

Camp Delhi, 3rd February, 1916.

My dear Liston,

Your letter of the 24th January. I think that the remarks which are alluded to by the President of the Bombay Medical Union in his letter must be those made by me in my speech in the Imperial Legislative Council on the 17th of March 1911, a copy of which I attach for your information. If you really want my advice with reference to the attitude which you should take up in the matter, I should strongly advise you not

to oppose the founding of the new Medical School in Bombay, and I would suggest that you gracefully withdraw from the position you have already taken up. Personally I am very strongly of opinion that the establishment of independent medical colleges and schools in Bombay and Calcutta would be extremely useful from every point of view, and I think it is a mistaken and short-sighted policy to oppose them. I am retaining the various enclosures to your letter in view of the possibility of the case being referred to me officially later on.

With kind regards,

Yours sincerely,
(Sd.) C. P. LUKIS

After the acceptance of the offer by the Corporation, it had to be incorporated in the scheme for the utilisation of the sum set apart for charity under the consent decree, and the scheme had to be submitted to the Court for sanction. By this time, Strangman, the permanent Advocate-General, had returned from leave and he took up the cudgels against the condition of confining the staff to the independent Indian medical profession. He spoke to me about it and said that he meant to put before the Court, the consideration whether it was desirable to prevent the Corporation from availing themselves of the services of highly qualified European medical men for appointment as professors. I told him how strong the feeling was in the public mind about the I.M.S. monopoly and added that if he raised the question before the Court, I would put before the Court all the considerations regarding the grievance that the public had for many years about the positive discouragement to the Indian medical profession in the working of the Grant Medical College and the Sir J. J. Hospital and the consequent desirability of this condition. On second thought, Strangman wisely did not raise the question and the scheme was sanctioned by the Court. The result has been that two

splendid institutions, the K.E.M. Hospital and the G. S. Medical College, have been working for many years with a highly qualified Indian personnel.

MUNICIPAL SUIT AGAINST GOVERNMENT

In the years 1916 and 1917, the Government of Bombay realising that primary education in the City of Bombay could not be fully developed out of the resources of the Municipality to an extent befitting the City, entered into correspondence with the Bombay Municipal Corporation with the object of bringing such education to a stage when a scheme of free and compulsory primary education in the City of Bombay might be carried out. Ibrahim Rahimtulla was then in charge of the education portfolio in the Government of Bombay. I was at the time Chairman of the Schools Committee and the Corporation acting on the Committee's advice welcomed the proposals of Government. As a result of the negotiations between the Government of Bombay and the Corporation, Government by a letter addressed on their behalf by the Secretary to Government, offered to bear one-half of the additional expenditure over the actual expenditure for 1917-1918, involved by the introduction of free and compulsory primary education in certain wards. The Municipality through its President accepted this offer with thanks.

In pursuance of this agreement, the Municipality spent large sums on expanding primary education in the City and Government paid to the Municipality one-half share of the additional expenditure in accordance with the bills submitted to them, for three years ending March 1921. Thereafter the Government of Bombay made some provisional payments towards the said expenditure but did not pay the full amount agreed upon and the sum remaining unpaid upto 1923-4 amounted to a little over two lakhs of rupees. The Corporation thereupon sued the Secretary of State for India for the recovery of the arrears, reserving

their right to claim the amounts due for subsequent years. Government put up various defences, among them being the plea that there was no valid enforceable contract so far as Government were concerned. The letter of Government agreeing to the arrangement was signed by the Secretary to the Government in the Education Department, who, it was contended, had no authority under the Government of India Act read with the resolution of the Government of India in that behalf, to bind the Secretary of State. It was further suggested that the President of the Corporation who had assented to the arrangement on behalf of the Corporation could not in law bind the Corporation as any arrangement on the Corporation's behalf was valid only when signed by the Municipal Commissioner. On these technical grounds, the claim of the Corporation was dismissed. In delivering judgment Justice Mirza said:—

> "The plaintiffs seem to have a moral justification on their side in complaining of Government's conduct in taking advantage of a legal technicality in their favour to avoid an obligation they had deliberately undertaken in regard to the spread of primary education in the city of Bombay."

Regarding other allegations of Government that the Municipality had not properly carried out their part of the contract the learned Judge said:

> "I do not consider that these matters, assuming they are proved, would morally justify Government in acting as they have done towards the Municipality. Although I sympathise with the Municipality on the moral aspects of this dispute, I must recognise that this is not a Court of Morals but a Court of Law."

APPRECIATION BY THE CORPORATION

On my accepting the judgeship of the Bombay High Court in June 1920, I sent in my resignation of the membership of the Bombay Municipal Corporation. The Cor-

poration in accepting the same passed the following resolution:

> "That in parting with the Hon'ble Sir Chimanlal H. Setalvad, the Corporation desire to place on record their high appreciation of the eminent and valuable services rendered by him during his long and distinguished career of 25 years, especially as a member of the Schools Committee for 23 years, and its Chairman for 18 years. His services in the cause of primary education in the City were unique and were characterised by strenuous study and devotion entailing great self-sacrifice.
>
> "That a copy of the resolution be forwarded to Sir Chimanlal with the best thanks of the Corporation for his brilliant services to the City, and with an expression of the Corporation's gratification for his appointment as a judge of His Majesty's High Court in Bombay and with an expression of their sincere wishes that in this new sphere of activity he will achieve a marked success and win the confidence of the public."

PART 4

UNIVERSITY OF BOMBAY

4. - - UNIVERSITY OF BOMBAY

IN the year 1893, Government announced that two Fellows would be nominated to the University Senate on the recommendation of Registered University Graduates following on an election to be held for the purpose by such graduates. In 1895, I was recommended under those Rules and was nominated a Fellow. This system of nomination of two Fellows on the recommendation of graduates remained in force till the University Act of 1904 when the registered graduates were given the right of direct election to the Senate. From 1895 till 1924 I continued to be elected from time to time by the graduates. Since the year 1924 I have been nominated by the Chancellor. In the year 1899 I was elected Syndic in law. Subsequently for some years, I was elected Syndic in Arts. Ever since 1899, I continued to be a member of the Syndicate till 1929. I was nominated Vice-Chancellor in the year 1917 and held that office for a continuous period of twelve years.

More than once I asked Government to relieve me as the burden of office along with my professional and other engagements was becoming too heavy but I was pressed to continue. This year I will complete fifty years as a Fellow of the Bombay University. From 1903 to 1915 I represented the University in the Bombay Legislative Council. How officialdom opposed my election in 1903 but miserably failed is narrated in the part entitled "Legislatures".

UNIVERSITY ACT 1904

Lord Curzon took office as Viceroy and Governor-General of India early in 1899. His reforming zeal was directed to the educational system in India. He was strongly in opposition to the policy of Lord Macaulay and Sir Charles Wood (afterwards Lord Halifax) with regard

to western education. He found that the Indian Universities were mainly affiliating and examining Universities on the model of the London University and were not residential and teaching Universities like Oxford and Cambridge. He was also pursuaded to think that the control of the Universities had passed into the hands of politicians and that it was necessary in the interests of education that the control should be placed in the hands of educational experts. In 1901-2, he appointed a Commission, to inquire into the system of University education obtaining in India; and based on the Report of that Commission a Bill for remodelling the Indian Universities was introduced in the Imperial Legislative Council in the session of March 1904. The Bill in effect tightened official control on the working of the Universities and evoked universal opposition from the Universities and the educated classes on the ground that the effect of the bill would be to convert the Universities into departments of the State. Mr. G. K. Gokhale who was then a member of the Imperial Council very ably put forward this view.

Dr. Ramkrishna Bhandarkar who had been specially nominated to the Imperial Legislative Council for the purpose of this Bill, voiced and supported the official view. He went to the length of saying that when he heard of the provisions of the Bill he said to himself: "The day of deliverance has come." According to him, the control of the University should be almost wholly in the hands of professors and teachers. The theory that a University can properly function only if its control is vested almost entirely in the hands of educationists has, however, been exploded. When the University of London was established, the Supreme Governing body was modelled largely on the type of the constitutions of Oxford and Cambridge and the control came to be vested in teachers and graduates. The Royal Commission on the University of London came to the deliberate conclusion that this was a mistake. In their Report, Lord

Haldane and his colleagues, after going exhaustively into the question of the governance of the University observed as follows:

> "The supreme governing body or court must, in our opinion, be of different constitution from the present senate which is modelled largely on the type of constitutions of elder universities. These universities are not dependent on public funds for their maintenance and their history makes their government by teachers and graduates reasonable or at least explains it. The city university is an altogether different case and we agree with the report of the Academic Council in the belief that the modern city university cannot flourish if the population it mainly serves is indifferent to its welfare."

The report of the Academic Council also said: "London will not regard the University of London as an integral part of the city until the university is willing to entrust its supreme guidance to a body composed mainly of citizens."

With regard also to the executive body corresponding to Syndicates of the Indian Universities, the Commission emphatically expressed the view that it "should not as to any large part consist of teachers" and that "the teachers who have seats upon it should not be so elected as to represent particular studies or particular institutions but merely to ensure a mutual understanding between the men of affairs and the men of learning." They further recommended that all the members of the executive body should as far as possible be appointed for their personal qualifications as men of business knowledge and administrative capacity and that the teachers should not determine the educational policy of the university though that policy should be determined in the light of the expert advice which the teachers are peculiarly fitted to give.

The Bill was, however, passed into law.

The old senates were swept away and new senates of 100 in the older universities were created by the Act, 80 members of whom were to be nominated by government, 10 elected by registered graduates and 10 by the faculties.

Under the transitory provisions of the Act, the senate had to elect a provisional syndicate under the directions of the Chancellor. The Chancellor of the University of Bombay, Sir George Clarke directed that the Syndics in Arts be elected by the Fellows named by him for that purpose. Similarly he gave directions about the election of Law Syndics by certain Fellows and also gave directions with regard to other faculties.

In doing this the Chancellor excluded from the Arts Fellows' list, all those who had law degrees in addition to their Arts degrees and confined them only to the electorate for the Law Syndics. Some of the persons so excluded from voting for the election of Arts Syndics were men who held high degrees in Arts and had in the past functioned as Syndics in Arts. I myself had been a Syndic in Arts for many years but was excluded from the Arts electorate. While persons holding Arts degrees were thus excluded from the Arts electorate, Fellows who had no academic qualifications were put in the Arts electorate. This method of electing the provisional Syndicate was illegal. Under the terms of the transitory provisions all Syndics had to be elected by the whole Senate.

When the Fellows who were under the Chancellor's order to elect the Law Syndics met, it was known that the point of illegality would be raised. Ordinarily, members of the Executive Council who were ex-officio Fellows did not attend University meetings. Pherozeshah Mehta was the most senior member barring the members of the Executive Council and he would have presided. Knowing that this point of illegality was going to be taken, Sir William Edgerley, Member of Council, came to the meeting and presided. As soon as the proceedings began, I rose to a point of

order and submitted that the election merely by the Fellows named by the Chancellor for the election of the Law Syndics was illegal and should not, therefore, be proceeded with. As soon as I raised this point, Mr. Justice Tyabji who was present at the meeting promptly left the meeting. He was quite right in doing so as the matter might come before him as a judge. Edgerley, as was expected, overruled my point of order and Chandavarkar and another Fellow were elected Syndics in Law. Syndics for other faculties were also elected by Fellows named for the purpose by the Chancellor and not by the whole Senate as provided in the Act.

A suit was then filed by Pherozeshah Mehta, myself and nine other Fellows against Dr. Mackichan, Chandavarkar and 10 others who were elected members of the provisional syndicate for declaration that their election was illegal and restraining them from acting as Syndics and an *interim* injunction was sought. Inverarity and Lowndes appeared for the plaintiffs and Raikes, acting Advocate-General, appeared for the defendants. On the motion for *interim* injunction, Raikes for the defendants gave the undertaking that the defendants would not do any acts or things beyond or outside of the internal management and working of the University of Bombay. On this undertaking an early date for the hearing of the suit was fixed. Lord Curzon's Government, thereupon, introduced a bill and passed an Act validating all directions, declarations and orders made under the Act and also the bodies corporate and provisional syndicates constituted and appointed in accordance with such directions. On the passing of the Act, the suit lapsed, each party bearing its own cost.

GOVERNMENT INTERFERENCE IN THE AUTONOMY OF THE UNIVERSITY

During the Governorship of Sir George Clarke (afterwards Lord Sydenham), his Government addressed to the University a series of suggestions with regard to examinations and curricula. His Government wanted the abolition

of the matriculation examination and the removal of history from the compulsory B.A. course. They also wanted the removal of some works of Burke and Bacon from the courses. The idea behind it was that the Governor believed that the study of English history and works of Burke and Bacon made educated Indians disloyal. What a fall this from the noble and liberal views which animated the minute of Lord Macaulay when he said:

> "It may be that the public mind of India may expand under our system till it has outgrown that system; that by good Government we may educate our subjects into a capacity for better Government; that having become instructed in European knowledge, they may in some future age, demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert or to retard it. Whenever it comes, it will be the proudest day in English history. To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens, would indeed be a title to glory all our own."

When the matter came up before the Senate, after a long debate that body with only one dissentient agreed to a revised compulsory course for the B.A. degree in which English history was retained. When the regulations went up to Government for sanction, Government declined to acquiesce in the decision of the Senate and ordered Mr. Sharp, the D. P. I. to give notice of a proposition upsetting the previous decision of the Senate and removing history from the B. A. course. The poor D. P. I. who had at one time associated himself with the retention of history had under orders to move for its deletion. It was openly asserted at the meeting of the Senate and could not be denied, that a whip was sent round to Government officials to be present and to vote in support of the abolition of history.

Even so, such abolition was carried by a majority of four. What a sorry spectacle all this made! Here was a body like the University Senate, 80 out of its 100 members nominated by Government presumably for their educational attainments, and when that body almost unanimously arrived at a conclusion on a question essentially an academical one, because Government took a different view, Government imposed their will on the University by practically ordering their officers to vote, not according to what they conscientiously thought was the right course to adopt, but according to what Government dictated.

As regards abolition of the matriculation, in spite of all pressure from Government, the Senate refused to abolish that examination. On that decision, the Government of Sir George Clarke petulantly issued a resolution that thenceforward persons who had passed the University matriculation should not be regarded qualified for employment in the public services. Some of the non-official nominated Fellows who had voted against the suggestions of Government were not renominated as Fellows on the expiry of their term of office. The orders disqualifying matriculates continued in force till sometime after Lord Willingdon took over the governorship and harmonious relations between the University and Government were restored as narrated later in this part.

THE UNIVERSITY CLOCK

The tendency to regard the University as a department of Government once more manifested itself during the regime of Sir George Lloyd. For some months the University Clock had got out of order and was not functioning and it was not found possible to obtain from England new parts to replace those that had been worn out. One day a letter was received from the Secretary to Government drawing attention to the public inconvenience caused by the clock not working and saying that if the clock was not put in order within a specified time, Government would take possession of it. The

Syndicate in reply wrote that while they realised the inconvenience caused to the public, they were very much surprised at the threat that Government had conveyed in their letter. They pointed out that the clock was the property of the University and that any attempt by any one to take possession of such property would be suitably dealt with. After that Government kept discreetly quiet.

CHANGE IN GOVERNMENT POLICY

In 1917 when Dr. Mackichan, who was then the Vice-Chancellor of the University left India, the Government of Bombay offered the Vice-Chancellorship to me which I accepted. On March 27, 1917, Lord Willingdon sent me a personal letter in the following terms:—

Dear Mr. Setalvad,

"I must write to you one line to say how very glad I am to hear that you are accepting the office of Vice-Chancellor of the University and I trust that under your guidance the relations between Government and the University may more and more become those of confidence and co-operation and that the idea that I know has prevailed that Government is anxious to diminish the powers and prerogatives of the University will entirely pass away.

I hope that you will never hesitate at any time to come to see me and talk over matters for I am most anxious in my dual capacity to give you all help I possibly can."

Yours sincerely,
Willingdon

Thus Lord Willingdon made the first move to end the strained relations between Government and the University that Sydenham had created.

I reciprocated and soon after my assumption of office as Vice-Chancellor, I, with the co-operation of the other members of the Syndicate, made efforts to bring about a settle-



As Vice-Chancellor
(1917-1929)

ment between the University and the Government on the outstanding questions that had created friction. A bridge had to be built to enable the two parties to meet without loss of prestige. After protracted negotiations, a scheme was evolved to constitute a Joint Board consisting of representatives of the University and Government to control secondary education and to hold the matriculation examination. The scheme was placed before the Senate of the University and after prolonged discussion it was adopted by them. *The Times of India* in a leading article in its issue of December 21, 1917 said as follows:

> "At a meeting on Tuesday, the Senate of the University of Bombay adopted, without dissent, the scheme of its Committee for a Joint Board, consisting of representatives of the University and Government to take charge of the supervision and guidance of secondary education in this Presidency and the Indian States within the territorial limits of the University. This experimental solution of a problem which has harassed and hampered secondary education for over a quarter of a century has been made possible, in the first instance, by the attitude of sympathy and respect for the independence of the University, consistently and unmistakably exhibited by the Government, which had the effect of removing from the minds of the members of the Senate jealously resentful—and rightly so—of any appearance of interference, all suspicion of the intentions of the Executive Government. The Director of Public Instruction, Mr. J. G. Covernton, showed by his deportment in the Senate that he was acting not merely in a spirit of loyalty to orders from above, but that he heartily entered into and appreciated the spirit of mutual co-operation between Government and the University. Great credit is due to the Vice-Chancellor and his colleagues on the Syndicate who carried on the negotiations with Government and secured from them acceptance of conditions which, while maintaining and

even emphasizing the paramount interest of the University, fully recognised the importance of the support and co-operation of the Educational Department in order to ensure the success of measures for the development of secondary education. A special word of praise is due to Mr. Setalvad for the great ability and skill with which he guided the deliberations in the Committee and in the Senate. His powers of lucid analysis and presentation of complex issues were of immense assistance in helping the discussion in the Senate and in formulating its conclusions on clear and definite lines. The successful piloting of the Joint Board Scheme through the Senate, so as to bring about its uncontested acceptance by that body—the most independent as it is the most intellectual public body in the Presidency—is a personal achievement, as well as a great public service rendered in the transcendent cause of higher education."

GOVERNMENT GRANTS TO THE UNIVERSITY

The attitude of the Government of Bombay towards the University of Bombay and higher education, in the matter of financial grants, has been very illiberal. At one time, they gave an annual grant of Rs. 10,000. It was reduced to Rs. 5,000 and at another time it was discontinued altogether. This was done under the plea that more funds were needed for expanding primary education which it was said was more necessary to be fostered than higher education.

The Government of India were, however, more liberal and sympathetic to higher education. In 1912, a liberal offer from the Government of India made it possible immediately to launch out in new directions. They offered to the University a non-recurring grant of Rs. 3 lakhs and a recurring grant of Rs. 45,000 for the purpose of developing its activities as a teaching body. These grants were utilised for developing post-graduate courses and the University Library.

In 1927, a deputation from the Syndicate of the University headed by me waited upon His Excellency Sir Leslie Wilson, the then Chancellor of the University, to request him to move the Government of Bombay to grant an annual subsidy of Rs. 3 lakhs to the University to enable it to develop its teaching and extension lectures activities. His Excellency assured the deputation that his Government was in sympathy with the aspirations of the University and said that before he left Bombay, he hoped to see a substantial advance made in the progress of the University. He informed the deputation that provision for an yearly grant of Rs. 50,000 to the University had been made in that year's budget and that it might be possible to provide for supplementary grants later in the year.

By their letter of August 2, 1927, Government informed the University that the question of granting any money from this provision of Rs. 50,000 would be considered only if and when the University submitted to Government for their approval proposals in respect of which the University required special financial assistance from Government. To this letter, a reply was sent on November 3, 1927 pointing out that when the deputation waited upon His Excellency the grant of Rs. 3 lakhs was asked for as a block grant to the University. The letter further stated that the University could not consistently with its independence as the body created by statute to conduct higher education, agree to the approval of Government being made necessary to the manner in which grants should be expended. The letter went on to say: "The State must, it is submitted, trust a body like the University for the judicious use of its resources including the grant by the State." The letter pointed out that in Great Britain, the question was considered whether the very liberal state grants that were being made in recent years to the Universities should be subject to approval by Government of the objects on which the grants were to be expended and a deliberate conclusion was reached that all grants by the State should be given as block grants in

aid of the University's general income. The letter quoted the following observation from the Report of the University Grants Committee in England:—

> "Our conviction which is in accordance with the national traditions, is that the Universities must be free to control their own destinies and to develop along their own lines. It has, therefore, been our constant endeavour in the administration of the treasury grants, not to impair the autonomy of the Universities or to diminish in any way their sense of responsibility. With this aim we have always recommended and shall continue to recommend, that so far as possible the annual treasury grants should be in aid of a University's general income, and that provided the obvious limits of financial prudence are not transgressed, it should ultimately remain with each University itself to decide in what precise way its income, including the Government grant, should be distributed over the field of its activities; for without control of finance, there can be no effective control of policy."

The letter then proceeded to say that the principles laid down by the University Grants Committee in England were fully applicable to the case of the Indian Universities and should be adhered to by the Government of India. Ultimately, Government gave the grant, without any stipulation.

Owing to the ever-changing attitude of Government towards the question of encouraging and financing higher education it was insisted upon when the Bombay University Act of 1928 was under consideration, that it should be statutorily provided that a grant of at least Rs. 1,17,000 should be payable yearly by Government to the University and such a provision was inserted in the Act. Experience since then has made it evident that a much higher grant is necessary if the University is to discharge adequately its

functions, specially in developing fully its teaching activities.

UNIVERSITY EXAMINATION HALLS

For some time, difficulty was experienced about providing accommodation for holding various University examinations. In 1910, the late Sir Cowasji Jehangir, the first Baronet, offered a sum of Rs. 3,25,000 for the erection of examination halls in the University Gardens for the use of the University on certain conditions. That offer was accepted by the Senate at its meeting held on July 22, 1910 and the University offered to contribute a sum of one lakh of rupees as their contribution to the same. Objections were raised from various quarters to the erection of the hall in the University gardens on the ground that it would spoil the amenities of the garden. This scheme accordingly fell through.

In October 1910, Government suggested to the University that they would provide accommodation for holding examinations in the building that was being constructed for the Royal Institute of Science and asked the University to agree to contribute one lakh of rupees towards its cost, pointing out that the University was at one time ready to contribute one lakh to the Sir Cowasji Jehangir's scheme. This proposal was referred to a Committee of the Syndicate which reported that as the University had to incur heavy expenditure for further extension of its activities, it was not desirable that it should part with a lakh of rupees from its accumulated funds and trusted that Government would be good enough to extend to it permission to use the examination halls which were to be provided in connection with the Royal Institute of Science.

When the matter came before the Senate, it was moved by Dr. Mackichan and seconded by Sir Bhalchandra Krishna that a reply in terms of the Committee's Report be sent to Government. The Director of Public Instruction, Mr. Sharp, moved an amendment to the effect that the University agreed to make the contribution. Vice-Chancellor Heaton

took the very unusual step of vacating the chair and addressing the Senate in support of the amendment. On votes being taken 24 including the Vice-Chancellor voted for the amendment and 23 against it. Dr. Mackichan demanded a poll with the result that 27 voted for the amendment and an equal number against it. Vice-Chancellor Heaton gave his casting vote in favour of the amendment. The proposition as modified by the amendment was put to the vote as a substantive proposition and it was found that 27 voted for the proposal and an equal number against it. The Vice-Chancellor again gave his casting vote in favour of it and declared the proposition carried. I demanded a poll and it was found that 28 voted for the proposition and 26 against it. At this meeting Pherozeshah Mehta and several other members of the Senate who would have voted against Mr. Sharp's amendment were unavoidably absent. The action of the Vice-Chancellor in carrying the motion to give a lakh of rupees by his own vote as well as his casting vote, given twice, when the Senate was so much divided on the issue, was severely criticised at the time. No Vice-Chancellor, previous or subsequent, ever made such a sorry exhibition of partisanship. During my Vice-chancellorship, the amount was refunded to the University.

ROYAL INSTITUTE OF SCIENCE

The conception of the Royal Institute of Science originated with Lord Sydenham. Soon after his assumption of office as Governor, he made an appeal for help in improving the study of science in the University of Bombay. This appeal met with a generous response. In Ahmedabad, Sir Chinubhai Madhavlal, the first Baronet, made a liberal provision for the establishment of Madhavlal Ranchhodlal Science Institute. In Bombay, a number of donors made possible the establishment of the Royal Institute of Science and the Sir Cowasji Jehangir Public Hall. In all 25¾ lakhs of rupees were given for the Institute and Rs. 4 lakhs for the Hall. Sir Cowasji Jehangir, Bart. began with a donation of Rs. 4 lakhs for the Institute and a separate donation of

Rs. 3¾ lakhs for building and equiping the Hall together with a further endowment of Rs. 75,000 for maintaining it. Sir Jacob Sassoon gave Rs. 10 lakhs and Sir Currimbhoy Ibrahim gave Rs. 4½ lakhs of which Rs. 1 lakh were to be reserved for establishing scholarships to be given to Muslim students attending the Institute. The late Sir Vassanji Tricumji gave Rs. 2¼ lakhs for the Library of the Institute. The Government of Bombay gave Rs. 5 lakhs from Provincial funds.

Owing to the urgent claims of the War, the Institute soon after its construction was fitted up as a Hospital, and was called "The General Freeman Thomas Hospital". The Institute and the Sir C. J. Public Hall were formally declared open by H. E. Sir Leslie Wilson, the Governor of Bombay on March 27, 1924.

Ever since the idea of establishing an Institute of Science in Bombay originated, I took the view that it should be allowed to be run by the University as a post-graduate department for scientific study and research. The Syndicate accepted my view and on July 31, 1919, they addressed a letter to Government that in their opinion, the management and control of the Institute should be entrusted to the University, forwarding with it a detailed statement of their views on the subject. They further requested that the Governor should receive a deputation from the Syndicate in order informally to discuss the whole question. After the deputation met the Governor, a letter dated December 29, 1919 was received from Government saying that the question of transferring the control and management of the Institute to the University should be postponed for consideration at a future date after the Institute had functioned for some time and that in the meanwhile, in order to associate the University more closely with the Institute, Government had decided to constitute an Advisory Board on which the University would be represented. In the result, the Board was constituted with the Vice-Chancellor as ex-officio Chairman.

Government in December 1920 applied for affiliation of the Institute for the B.Sc. degree. The Committee for local inspection appointed by the Syndicate while saying that the Institute was well-equipped for the B.Sc. standard, added that if it was at all to fulfil its legitimate function for which it had been specially endowed and founded, viz., "to provide for the Bombay University a centre of research where scientific work of a high order, much higher than that which is possible in any local or other colleges in the Presidency, can be carried out, making original research possible both for the professor and the student," the staff and equipment and apparatus of the Institute which are inadequate for these requirements needed considerable strengthening.

On August 19, 1922, the Senate in refusing affiliation passed the following resolution:—

> "That Government be informed that the Senate is strongly of opinion that an Institution so liberally endowed as the R. I. S. should primarily be a post-graduate Research Institute affording ample facilities, both pure and applied, and providing adequate instruction for such graduates in Science as desire to obtain the M.Sc. degree of the University by reason of original research work of a high order or by submitting to the prescribed examination, and also for others who, from pure love of Science, wish to do research work without any intention of proceeding to a degree.
>
> "That the University may at an early date be entrusted under proper safeguards with the management, control and direction of the Institute that it may fulfil its natural function and be favoured with as liberal Government contributions as the University College of Science, Calcutta."

Government by their letter dated November 8, 1922 accepted the recommendation of the Senate contained in the first part of the resolution. Regarding the Senate's sugges-

tion about handing over the control of the Institute to the University, Government said that they could not do so as the "donors of the endowments of the Institute have recently communicated to Government their express desire that at no time in future should the control of the Institute be transferred to the Bombay University or to any other body."

In July 1926 the Senate granted affiliation for five years for the purposes of the B.Sc. degree. In doing so, they expressed a desire that the "main functions of the Institute as a place for research work and advanced science teaching will be constantly kept in view and that the Institute will make rapid progress in those directions." The Institute has since then been conducted on those lines.

UNIVERSITY DEPARTMENT OF POST GRADUATE TEACHING

(a) *School of Economics and Sociology*

In March 1918 the Senate approved a scheme for the establishment of the School of Economics and Sociology. The object of the School was defined thus:—

> "To promote the study of the Indian social institutions with reference to their effects on the economic and industrial life of the people and to conduct research in economics and sociology. The centre of the scheme would be the organisation of research work in the fields of knowledge named, under the guidance of those who have an intimate acquaintance with India, and with research methods in these subjects."

Professor Patrick Geddes, the well-known sociologist was appointed Professor of Sociology in November 1919. The University sent Mr. C. N. Vakil to Europe as a special scholar for being trained in the methods of research in Economics and Mr. Ghurye for similar training in Sociology.

Prof. K. T. Shah was appointed Professor and Mr. Vakil, Assistant Professor of Economics in 1921. Since then the

School has gradually grown and the staff has now been considerably expanded. Later, Vakil succeeded Shah.

Some of the research work done by the staff and students has been published and has earned appreciation. The library of the school which now contains 28,000 volumes is the best of its kind in India and attracts readers from outside the School.

(b) *School of Chemical Technology*

In 1921 a Committee appointed by Government with Sir M. Visvesvaraya as Chairman, to consider the extension of technological education of all grades in the Bombay Presidency recommended that the Faculty of Technology be instituted in the University of Bombay and that a College of Technology be established in the City of Bombay. While these recommendations were endorsed by the Committee on University Reform in 1925, it was not until 1930 that further steps were taken.

The Department of Chemical Technology was started in 1933. During the brief period of its existence, the department has progressed steadily both with regard to teaching and research. Graduates of the department have been readily absorbed in industries, or are carrying out research in the department and elsewhere. While its main purpose is thus being satisfactorily fulfilled, the department has also been able to place its services at the disposal of the chemical industries of the Province for the purpose of carrying out industrial research, investigating technical problems and working out manufacturing processes.

The department has now been transferred to its permanent habitation at Matunga. The foundation stone of the new buildings for the department was laid by H. E. Sir Roger Lumley, Chancellor of the University, on March 17, 1941. Several substantial donations totalling Rs. 30,70,000 from various people have been received by the University, the latest among them being Rs. 7 lakhs

given by Sir Homi Mehta who is always generous in helping a good cause, and Rs. 4,03,000 by the Bombay Millowners' Association which donation was secured by the efforts of Sir Vithal Chandavarkar.

THE UNIVERSITY TRAINING CORPS

In the latter part of 1917 when the situation in Mesopotamia was far from satisfactory and the situation on the western front in Europe was giving cause for anxiety, Government decided to promote a Military Unit called the University Training Corps. This corps was intended for the purpose of garrisoning key-points in different parts of India when required and recruiting non-commissioned officers from the corps. Meetings were held in various colleges where students were addressed by myself and the professors urging the students to join the corps. Some of the students who were enthusiastic also addressed the meetings. At these meetings, students were told that Government intended to give them adequate military training and that the pay and rank of the privates and non-commissioned officers of the corps would be exactly the same as those granted in the case of European regiments and the clothing, rations and equipments would be the same as those supplied to European regiments.

The recruits from the Bombay colleges as well as those from the Poona colleges received preliminary training at the hands of non-commissioned officers posted in Bombay and Poona for that purpose. It was then arranged that all the recruits from different colleges should proceed to Poona for intensive training for three months from November 1917 to February 1918.

On the day of the departure of the Bombay recruits to Poona, they were called to what was then the Skating Rink near the Municipal offices. When the students were lined up, the officer in charge, called out the students as sepoy so and so and the non-commissioned officers of the corps, some

of whom were professors and senior students, were called out as Jamadar so and so, etc. Two of the students (N. H. Coyaji, now Justice Coyaji, and K. A. Masani) who were both non-commissioned officers protested against the nomenclature used. They also declined to accept the clothing which was issued and which consisted of lungees, kurtas and pugrees. The officer told them that their conduct in so refusing amounted to mutiny and disciplinary action would be taken against them. Coyaji and Masani took a taxi and came to me with the clothing that had been issued to them. On hearing them, I immediately got in touch on the telephone with Lord Willingdon.

Lord Willingdon and the military authorities discussed the matter on the telephone for a considerable time. The result was that it was agreed that the students should leave Bombay in their own clothing which they used during the period of training in Bombay and that the matter of uniform and nomenclature would be considered and decided later. It was a week after the Bombay and Poona recruits settled down in the training camp, that appropriate European uniforms were given to them except the helmet. As regards the helmet, they were told that helmets could not be given to them as they could only be given to British units. It was much later that helmets were also given to them. As regards the nomenclature, the designations of subedar, naik, sepoy, etc. were still continued and were only changed somewhere in 1920.

The intensive training given to the students at Poona for 3 months was very successful and the students gave a good account of themselves. I visited the students in camp several times and once we had dinner in the Indian style in which the students, non-commissioned officers of the Company and Colonel Steel took part. Later, however, Government and the military authorities got lukewarm and thereby discouraged these young men of the colleges who naturally got disappointed. The training period was con-

siderably curtailed and various facilities were denied. I invited the citizens of Bombay to raise a fund for providing various amenities for the student recruits. A good amount was subscribed and was utilised for providing comforts for the recruits.

The following letters from Lord Willingdon to me are eloquent of what he and I felt about the unsympathetic and obstructive attitude of the Government of India and the military authorities.

November 26, 1917.

"I am deeply distressed about this uniform trouble and really this apparent difficulty seems so easy that I hope all will be well. I think I had better write direct to the Viceroy on the matter and will do so at once. Your hair will grow grey, mine white, over this business. But I hope and think that all will be well and I entirely agree with you that it is a thousand pities to damp the ardour and enthusiasm of these boys. I will do my best to get things put straight. I want much to talk to you on this business and will send you a line when it can be arranged; just at present, I am awfully busy."

January 11, 1918.

"I will certainly try to fix up the two matters at Delhi about our University boys. I talked about them to Tighe the other day and he tells me that he has favourably recommended the matter but that he can get nothing out of the C-in-C. However, in the interests of reforms, I will try hard to get something done. It is very trying for you and me when we got the boys to come in, to find that the powers above us are so amazingly shortsighted in their actions or rather want of actions."

September 16, 1918.

"What can I say to you? Except that I sympathise with you with all my heart. I have written up lately to

Army Head Quarters, and will now write again, I can get no satisfactory reply and have no idea what the reason for the delay is. I wish they would tell us definitely that there is some good reason, for I can fully realise that these young men are losing confidence, if they are not getting into a worse frame of mind. I must say it is awfully hard on you and me, but particularly on you, for you have always worked so strenuously for these University youths and the first year's training was such a success. The want of imagination of some people passes my belief, but it is my constant trial in life to have to find it day by day.

"I will do my best, I promise you, by one last, desperate and forceful effort, to encourage the C-in-C to take prompt action. More I cannot do, beyond again telling you that I feel just as strongly about it as you do, and I own am beginning to despair."

UNIVERSITY CONVOCATION ADDRESSES

In delivering my first Convocation Address in 1918, I deprecated the criticism of certain people that the system of University education in India had been a failure. I pointed to the great and useful work done by graduates of the University in various walks of life and referred to the splendid educational achievement of the Deccan Education Society. I said that there was no reason for pessimism when the University had produced a profound scholar of the eminence of Sir Ramkrishna Bhandarkar, thinkers like Mahadev Govind Ranade of mighty intellect, Kashinath Trimbak Telang of quick and subtle mind and ardent patriots and leaders of men like Pherozeshah Mehta and G. K. Gokhale. The example of every one of them would be a source of inspiration to hundreds and thousands of young men in the country.

Having in mind the attempt of Sydenham to control the University and treat it as a department of Government, I emphasised that the first and foremost essential for the

success of the University was that, it should in fact be and should be made to feel that it is independent of any external authority and thus realise the full measure of its own responsibility. I referred to what Sir Alexander Grant, the then Vice-Chancellor, said at the Convocation in the year 1866-7 on this point and what the then Chancellor Sir Bartle Frere said in reply. Sir Alexander had said:—

> "A University like ours occupies necessarily a delicate position. Its members are all appointed by Government, it derives all its current resources from the Imperial Treasury; and its acts are all subject to veto from the Local Administration. Under such circumstances, especially in India where it is often felt that all else except the Government, is uncertain and fluctuating, there cannot but be a tendency for a University to lose caste, as it were, and to come to be regarded as a mere office or department of the State. What is to be apprehended from this tendency is not only loss of dignity to the University itself, but also a loss of the highest kind of efficiency in its working. For the mission of a University, in a country like this, is nothing else than to create an intellectual and vital soul among the people; and there can be no question whether this mission is likely best to be fulfilled by persons feeling themselves nominated merely to carry out the views of a Government, or by the free and enthusiastic action of men feeling responsible to themselves for the good or bad success of the University."

The Chancellor, Sir Bartle Frere, had expressed his conviction that the political government of this country could hardly commit a greater mistake than by attempting to convert the University into a mere office or department of the State.

I said further that another essential condition of the success of the University was that the effective control should be vested not in professors and teachers but in the

hands of men of affairs and businessmen who, being, themselves products of the University, take an interest and pride in its further progress and development, and that teachers should not determine the educational policy of the University. The policy, I said, should be determined in the light of the expert advice which the teachers are fitted to give, and I cited the report of the Royal Commission on the University of London which has been previously referred to in this chapter. I commended the view of Cardinal Newman regarding the practical end of University training expressed in these words. "University training is the great ordinary means to a great but ordinary end: it aims at raising the intellectual tone of society, at cultivating the public-mind, at purifying the national taste, at supplying true principles to popular enthusiasm and fixed aims to popular aspiration, at giving enlargement and sobriety to the ideas of the age, at facilitating the exercise of political power, and refining the intercourse of private life."

Between 1918 and 1920 a Commission with Sir Michael Sadler, Vice-Chancellor of Leeds University as Chairman, was appointed by the Government of India to consider and report upon the working of the Calcutta University and to make recommendations about improvements. The other members of the Commission were: Dr. J. W. Gregory, Mr. P. J. Hartog, Prof. Ramsay Muir, Sir Ashutosh Mukherji, Mr. W. W. Hornell, Dr. Ziauddin Ahmed and Prof. G. Anderson (Secretary). That Commission had made its report before I addressed the Convocation again in 1920. In my address, I referred to some of the leading ideas and underlying principles of the Sadler Report and pointed out how those ideas and principles could be applied to Bombay with due regard to our different circumstances. This was the third commission about Indian Universities appointed during a period of thirty years.

The appointment of the First Education Commission of 1883-4 which I remember as the most striking event of my

under-graduate days, was hailed as an all-India step of capital import by the educated classes throughout the land. The Curzon Commission of 1902 followed by the Act of 1904 and the practical measures taken to give effect to it had made, as previously stated in this part, University policy and administration the burning political topic throughout the quinquennium. The Sadler Commission was the third occasion when education again agitated deepest thoughts and feelings all over India.

In my Convocation Address in the year 1922, I invited attention to the larger obligations and needs in the matter of education which were the necessary implications of the new constitutional changes under the Government of India Act of 1919. I said :—

> "The greatest need in popular and democratic Government is 'Order and Progress' and this can only be secured by education. Extension of suffrage must be accompanied by extension of training for the intelligent use of the suffrage. The State can protect itself only by securing that voters acquire sufficient knowledge to understand their responsibilities and the methods of discharging them. Voters of all classes must be trained to exercise intelligent and independent judgment in casting the ballot. Unless this is done, Aristotle's Sequence—Democracy, Mobocracy, Despotism—is sure to come true. Popular and representative Government cannot exist and thrive without universal education and the first cannon of State policy must, therefore, be the education of the masses. Universal education must not, however, be confined to the children. Bringing all the children in the country into the schools for a prescribed period will bear fruit when these children grow up and get the vote. But the present voters are the parents of those children. And universal education not only of the children but of the adults must be undertaken. 'Educate your masters,'

said Robert Lowe at the time of the Reforms Act in 1868 in England. That is what is necessary to be done in India to-day."

I further pointed out that while universal primary education was necessary, thinking was of greater importance than reading: reading was necessary only as a means for proper thinking. We are experiencing now the results of wide extension of suffrage with only a small percentage of the voting population being able to think for themselves. People, therefore, must be taught to reflect and judge. Higher education was, therefore, essential as there was special need of capable and honest leaders and it was here that the University would render inestimable service to representative Government, by producing men who having acquired the habit of clear thinking and being inspired by wide outlook and liberal ideas, could rise above passion and prejudice and could lead the masses to the right path. The nation needed citizens with proper equipment and ideas and the University could and ought to supply them. I also sounded a note of warning how short-sighted and injurious it might prove to neglect higher education for the sake of a rapid expansion of primary education.

I then referred to the agitation in favour of imparting higher and University education through the vernaculars of the country and not through the medium of a foreign language. While I was in favour of encouraging the study of vernaculars, I said I wanted the University of Bombay to be our "one window towards the West through which world culture might continue to pour in and humanise and elevate us".

Before I addressed the Convocation in 1925, the University Reforms Committee with myself as Chairman had been appointed and had made its report. I commended that report to the attention of all interested in higher education. I then referred to the three tasks which, in my opinion, modern urban Universities should undertake. One was

the establishment of a school of journalism. Such a school for the training of jurnalists desirous of following their profession in a spirit of public service with a sense of the sanctity of truth and determined to give fairplay to all parties and persons—intelligent and responsible exponents of the views they held themselves but at the same time religiously tolerant to all others, however divergent from their own—was a great need of the country. The second task, I said, was extension work among and tutorial classes for our adult city population and the third was College of Chemical Technology. The idea of establishing such a college was mooted first by the Bombay Committee on Technical and Industrial Education in 1922 and the University Reform Committee had made concrete proposals in this direction involving capital expenditure of about Rs. 50 lakhs and a recurring annual expenditure of about Rs. 3½ laks.

I am much gratified that a Department of Chemical Technology with various branches has now come into existence and is located in a fine building especially constructed for the purpose at Matunga. I myself was instrumental in securing donations of several lakhs of rupees for this Department of Technology.

I further pointed out that higher education was as essential and indispensable as primary education and I quoted Prof. Ramsay Muir with appropriate changes.

> "It was a mistake" said Prof. Ramsay Muir "to think of research (read here higher education) as a sort of ornamental superstructure at the top of the educational building, very pretty to look at, but in no way essential to the strength and stability of the structure. The true view was to think of the educational system as a whole as an irrigation system in which research (read here the University) formed the great reservoir of pure learning from which all the canals and ditches were supplied those pure waters which flow throughout the system."

I then read the following message to the students from Rabindranath Tagore:—

"I feel sorely grieved when I find a considerable number of our young men of the present day ready to repudiate western culture, rendering themselves intellectually untouchable in the civilised community. They ought to know that only the mind that is crudely primitive suspiciously barricades itself against all contact of truth to which, by chance, it is not accustomed. Such a mind may be compared to the fiercely unreceptive desert which allows rain clouds from alien horizons to pass over it without drawing its due share of tribute from them. Man's highest privilege is to be able to claim as his rightful inheritance all that is great and true, appearing in any part of the world and at any period of its history. It is a truism to say that our wealth of culture attains its perfection through its free access to foreign contributions just as the material wealth of a country reaches its greatness not merely from whatever it can produce within its own boundaries, but also from what it can import from the larger world outside. It is because our inmost truth lies in the *fundamental unity of man* that we cannot properly know ourselves unless we know others, and, therefore, if being afraid of losing the sorry distinction of our intellectual solitude, we closely shut our mind against free ventilation of ideas that flow from shore to shore, we also shut out the only light that can reveal to ourselves the universal significance of our own culture."

LL. D. DEGREE CONFERRED

On December 26, 1922 a Special Convocation of the University of Bombay was held to confer the honorary degree of LL.D. on Lord Sinha, Chandavarkar and myself in pursuance of the vote of the Senate in that behalf. The Chancellor, Sir George Lloyd, presided. Sir Lallubhai Shah in moving the grace in an appropriate speech ended by saying:

"His (Sir Chimanlal's) interest in the educational problems of the country has been keen, and his contribution to the solution thereof always valuable. He has worked strenuously for the progress and development of this University, for the preservation of its independence and constitutional rights. His career at the Bar, his work in the local and Imperial Legislative Councils, his position and his arduous and able work as Vice-Chancellor and his many services to this University clearly indicate such 'eminent position and attainments' as would fully justify the decision of the Senate. The name of Sir Chimanlal Setalvad will find a prominent place in the history of this University during the last 25 years." His Excellency the Chancellor, addressing the Senate said:—

> "Sir Chimanlal Setalvad, the third recipient of our congratulations to-day, is still we hope in the midst of a career which has been equally distinguished in the spheres of learning, law and public affairs. I would refer to that of learning first because Sir Chimanlal has always placed his duty to this University in the forefront of his many activities, and as its twice-nominated Vice-Chancellor he has been very deeply associated with the management of its affairs and the safeguarding of its interests. I am glad of this opportunity of adding my personal appreciation of his labours since my succession to the office of Chancellor; and I have no doubt that, as the Senior Fellow in Law has already remarked, the Senate in determining to confer this signal distinction upon him have had prominently in mind the indefatigable service which has cemented his earlier association with the University into a bond which I am sure both the *Alma Mater* and her distinguished *alumnus* will always be proud to acknowledge.
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> "Long and intimate however, as Sir Chimanlal's connection with the University has been, it has adorned rather than superseded a varied career of public use-

fulness outside her walls. Like his fellow Doctor Sir Narayan Chandavarkar, he has been chosen to represent this University in the deliberations of the Legislative Council; like him also he has risen to the dignity of the Bench. That he has resigned a post which he might well have made the goal of his ambitions in order to respond to the call which he felt urging him to return to a more public life in other spheres, is testimony to the disinterestedness with which he conceives his duty to the community at large. He will, I know, understand the honour which we have paid him to-day, as a token that his University looks confidently to him, in passing on to further achievements, to maintain the spirit and traditions of which he has ever been a staunch up-holder."

* * * * *

In November 1921, a Special Convocation of the University was held for presenting an Address of Welcome to the Prince of Wales (afterwards King Edward VIII). I read an Address to the Royal Prince who in reply thanked the University authorities for giving him an opportunity of getting into touch with its students. After the Convocation, the Prince moved about amongst the students and talked to them freely.

In 1928, I was invited by the University of Nagpur to deliver the Convocation address. I there defined my attitude regarding the question of students taking active part in current politics in the following words:—

"My attitude towards the problem of students and the current questions of the day is also similar. What India needs specially at this crisis of her history is not amateur politicians and half-baked journalists and blind leaders of the ignorant masses. Dadabhai Naoroji, Pherozeshah Mehta, Gokhale and the Liberal leaders of the last generation never encouraged University students to dabble in politics and current con-

troversies. They were not the men to commit the short-sighted and unpatriotic blunder of tempting students away, more and more, from their proper duties and tasks. But the evil has now grown and spread to such an extent that the Universities should in my judgment make an united effort against it. An evil custom or tendency grows like a weed; neglect of duty and loosening discipline in one direction or on one pretex soon enfeebles the system as a whole and it may take decades to undo the mischief of a few thoughtless years."

In that address, I again emphasised the urgent need of establishing a school of journalism at least in the older Universities.

THE REFORM OF THE UNIVERSITY

For some time it had been generally felt that the University should, in addition to the School of Economics and Sociology, undertake more and more teaching instead of being mainly an examining body and that in order to obtain the necessary funds for this purpose, the City and the Presidency should be brought into closer contact with the University and for that purpose the constitution of the University should be more democratised. On March 6, 1924, Sir Leslie Wilson, the then Governor and Chancellor of the University wrote to me that he and members of his Government were considering the desirability of having the whole question of University reform thoroughly investigated and that he wanted to talk the whole matter over with me before arriving at a final decision. He said in that letter: "I certainly think that its (University's) control should be made more democratic and I do not believe we shall ever get adequate financial support to make the University what it ought to be, unless this change is made." He further suggested the setting up of a committee to make a thorough examination of the whole position and to put forward practical suggestions.

Thereafter, I had discussions with the Governor and ultimately by a Press Note of March 26, 1924, the appointment of a Committee was announced. In the Press Note, Government said that they had come to the conclusion that, "before determining upon any definite course of policy, the whole position of the University of Bombay should be examined in all its aspects by a Committee of gentlemen interested in the problems of higher education". The following gentlemen were appointed members of the Committee with myself as Chairman.

Dr. (now Sir) R. P. Paranjpye, Rev. Fr. E. Blatter, Mr. (now Sir) H. P. Mody, Capt. (now Sir Victor) E. V. Sassoon, Mr. Mirza Ali Mahomed Khan, Sir Fazulbhoy Currimbhoy, Mr. Jehangir B. Petit, Principal A. L. Covernton (Secretary), Mr. M. R. Jayakar, Mr. K. Natarajan, Prof. K. T. Shah, Sir Purshottamdas Thakurdas, Mr. A. B. Latthe.

Mody resigned owing to his departure from India, and Capt. Sassoon did not take part in the work of the Committee owing to other engagements. Sir Purshottamdas Thakurdas attended the meetings during the first month after which other engagements prevented him from attending. Dr. Paranjpye was similarly prevented after the first meeting owing to his appointment on other public committees. Sir Fazulbhoy Currimbhoy and Rev. Father Blatter were absent for some periods in Europe.

The proceedings of the Committee lasted for 350 hours. There were 95 meetings held, the first being held on May 9, 1925. The only member who attended all the meetings was the Secretary, Covernton. I attended in all 89 meetings. The Committee issued a questionnaire of 54 questions and considerable written as well as oral evidence was taken. After taking a detailed historical review of the work of the University in various stages, the Committee made their report.

The report controverted the various attacks that had been made against the University and emphasised the im-

portance and necessity of proper higher education for the political as well as the industrial uplift of the country. After considering the proposal that was made to transfer the University and Colleges to some place in Salsette, in view of the financial and other practical difficulties the idea was negatived. The Committee, however, made certain proposals for the concentration of University activities and absorbing the colleges into a University area round about the present University buildings and for the University undertaking post-graduate teaching.

As regards the creation of new Universities in Maharashtra, Gujerat and Karnatak, the Committee laid down the conditions to be fulfilled for the starting of such Universities. Powers and functions of the Senate and the composition of the Syndicate and its powers were defined. The creation of an Academic Council and Boards of Studies were recommended.

In making recommendations regarding the constitution of the University, the Committee kept in view the fact that an essential condition of the success of the University having regard to its peculiar features was, that the government of the University should be vested not in a body composed of professors and teachers but in a body on which men of affairs and business were strongly represented. With this end in view, Municipal and Local Boards were given representation and it was hoped that by such association, the University would be able to attract financial support from these bodies as well as the commercial community. This expectation of getting public bodies interested in the affairs of the University has not been sufficiently realised. In the actual working of the Act, it has been found that the creation of several academic bodies involving many elections during the year has not contributed to the hoped-for efficiency, while it has increased the burden of expenditure. It has also brought in its wake certain undesirable features and activities which require to be eliminated. In my view, the

time has come to review the whole position regarding the University of Bombay in the light of experience and to simplify the present somewhat complicated constitution and get rid of the abuses that have developed. Recently, at my instance, the Senate has appointed a Committee to consider the whole subject.

The Government of Bombay introduced the University Bill in the Bombay Legislative Council. Before doing so, the bill had not been sent to the Senate to invite its views. At a meeting of the Senate held on September 24, 1927, the Senate protested against the action of Government in introducing the bill in the Legislative Council without first consulting the Senate on the provisions of the draft bill. The Government of India to whom the bill had been previously submitted had sent a memorandum to the Government of Bombay raising various points regarding the bill. Clause 5 in the bill investing the Governor-General with visitorial powers under which he could make enquiries and give directions regarding various matters connected with the internal management of the University or its affiliated institutions, had been inserted at the instance of the Government of India.

In *The Times of India* of November 10, 1927 was published an article by me stressing the extreme undesirability of that clause. I recalled how even without such a clause in the time of Lord Sydenham, the University had been dictated to and Government officials on the Senate were ordered to vote in a particular manner. I said:—

> "It requires little imagination to conceive what might happen with this clause in the Act, if there was a Sydenham in Bombay and a Curzon at Delhi, who were both obsessed with the belief that Providence had made them the sole repositories of wisdom and nothing could be right with which they disagreed."

In the Select Committee, the clause was adopted. The Minister in charge of Education, Dewan Bahadur Harilal

Desai said that as the Government of India had directed this clause to be introduced, it should remain. K. M. Munshi who was the representative of the University in the Legislative Council, evidently, did not fully realise the implications of the clause and signed the Select Committee's report. When the bill came up before the Legislative Council, there was strong opposition to this clause from all quarters and the consideration of this particular clause was deferred pending the negotiations that Sir Leslie Wilson and his Government were carrying on with the Government of India. Munshi confessed that he had failed to realise the effect of this clause and expressed his regret that he had overlooked its implications.

The Senate at its meeting held on November 12, 1927 protested against this clause and passed the following resolution moved by Bhulabhai Desai:—

> "That the Senate is of opinion that Clause 5 of Bill No. XXI of 1927 (A bill to amend the law relating to the University of Bombay) now before the Bombay Legislative Council vitally affects the independent government of the University in such manner that the Senate desires that it should be deleted from the Bill; and that the Senate is further of opinion that if this clause is insisted upon it would prefer to continue the administration of the affairs of the University under the Act now in force."

I prepared a note on this clause and other matters raised by the Government of India regarding the bill and on December 31, 1927, Sir Leslie Wilson wrote to me: "I am now sending the note to the Viceroy with my remarks and I shall certainly urge that the best course to follow would be the entire omission of clause 5." Considerable correspondence ensued between the Government of Bombay and the Government of India. The latter, however, did not agree to the deletion of clause 5 but suggested an alternative clause vesting the visitorial powers in the Chancellor of

the Bombay University. The clause was ultimately passed in that form.

I RELINQUISH OFFICE OF VICE-CHANCELLOR

My period of office as Vice-Chancellor was expiring in March 1929 and Sir Frederick Sykes, the then Governor and Chancellor, wished me to continue in office for a further period of two years in view of "the advantage of entrusting the duties connected with the constitution of the University under the new Act to one so well-acquainted with all the problems and so familiar with every detail of University administration." I, however, did not desire a further period of office. Sir Frederick Sykes then wrote to me in his letter of March 27,1929: "I should like to take this opportunity of expressing to you my sincere appreciation of the manner in which you have devoted your great talents and your wide experience to the work of the University and especially to the amendment of the Act which has been recently passed into law. Your services to the cause of education in the Bombay Presidency have been of a high order and will be gratefully remembered by Government and by the public."

At the meeting of the Senate held on December 6, 1929 S. C. Shahani, the Principal of D. J. College, Karachi referred in appreciative terms to my services to the University and the following resolution was adopted:

> "That the Senate records its deep sense of the appreciation of Sir Chimanlal Setalvad's services to the University."

In connection with the celebration of my Golden Jubilee at the Bar, the committee of the Bar appointed for the purpose, presented to the University of Bombay a marble bust of myself to be placed in the University Convocation Hall. This was accepted by the University and the bust was unveiled on March 10, 1939, by His Excellency Sir Roger Lumley, the then Chancellor of the University. In doing so he said:—

> "It is a real pleasure to me to unveil the bust of Sir Chimanlal Setalvad. It will be among Sir Chimanlal's

most treasured thoughts that the general feeling has inspired the efforts of his many friends which have culminated in this ceremony today. I trust he may enjoy that thought for many years to come.

"It is a rare thing in public for a man to see in his own life-time his bust or statue set up as a tribute to his work. Such a tribute is only possible when there is unanimity among his contemporaries and a strong general feeling that such recognition is due.

"Sir Chimanlal has served the province, India and the Commonwealth of Nations in law, in government and in the University. He has given an example, and is still giving it of the way in which great gifts can be devoted to the service of the public. It seems to me, therefore, most fitting that this bust should stand in the hall of this University to which he has given so many years of unsparing work and where it can be recognised by the young men and women of future generations as a tribute to a man whose example should be followed."

PART 5 LEGISLATURES

5. - - - - - - LEGISLATURES

ELECTED TO LEGISLATIVE COUNCIL

IN 1893 what was called Lord Cross' Act was passed by Parliament under which a certain number of members of the Legislative Council were to be nominated by the Governor on the recommendation of certain municipalities. The municipalities of the Northern Division of the Bombay Presidency had to recommend one member. The election was to be made by an Electoral College comprising persons elected by the different municipalities out of their own body in certain proportions. The Electoral College so constituted consisted of 84 members.

Under the rules it was necessary that a candidate for election must be a resident within the division. I was then practising in Bombay as a pleader and was physically residing in Bombay. I was, however, in another sense a resident of Ahmedabad where my parents were residing and where we had our family house. I was, therefore, advised that I would be eligible for election by the municipalities of the Northern Division. In order, however, to avoid any possible objection, I rented a house in Bandra which formed part of the Northern Division and removed myself there in good time before the election so that I could literally satisfy the residential qualification. There were in all eight candidates including myself for one seat. One of them was Bechardas Viharidas who had been for some time a nominated member of the Legislative Council, and Pherozeshah and Wacha were desirous that he should be returned by the Northern Division. When my candidature was announced, both Pherozeshah and Wacha tried to persuade me to make way for Bechardas but I did not accede to that suggestion. The election which was held at Ahmedabad by the Com-

missioner of the Northern Division was very hotly contested. Almost all the municipal representatives attended. The ballot resulted in my getting 30 votes, the second man being Nandashankar Tuljashankar of Surat who got 21 votes and the remaining votes were divided among the other six candidates.

HIGH COURT INSOLVENCY CLERK

In the Council, I persistently took up the question of the scandalously exorbitant remuneration that certain officers on the Original Side of the High Court were drawing. The Clerk of the Insolvency Court used to be paid by certain fees levied from the litigants and his average monthly remuneration for a considerable time came to over Rs. 3,000 a month. His duties which were for the most part of a formal character occupied a small portion of his time. This officer was usually employed for a large part of Wednesday when the Insolvency Court sat and for about an hour a day during the rest of the week. A Finance Committee appointed by Government some years ago had recommended that Rs. 600 per mensem would be adequate remuneration for the work. It took many years of agitation before the Clerk was put on a salary of Rs. 800 per mensem.

The insolvents and opposing creditors had to deposit certain amounts for meeting the Court charges from time to time. After meeting the necessary expenditure for the Court charges out of these deposits some balances remained with the Clerk. He did not keep a separate account of these deposits and appropriated the balances. In pursuance of my questions, an enquiry was made and it was found that the sum so appropriated by the Clerk amounted to Rs. 32,116 and he was asked to refund the amount by certain instalments.

OFFICIAL ASSIGNEE

I also took up the question of the remuneration of the Official Assignee who was also being appointed Receiver in various suits and was remunerated by fees on a percentage

basis which at times amounted to double the salary of a High Court Judge. It took many years of persistent agitation before the Official Assignee was put on a salary basis and the post of the Official Receiver was created also on a salary basis. Even as late as March 1915, I supported a resolution moved by Mr. Vithalbhai Patel for putting the Official Assignee on a suitable fixed salary. In supporting the resolution I said:—

> "My honourable friend Mr. Patel has pointed out that for the last five years ending 1913, the present incumbent has been fortunate enough to draw a salary of Rs. 10,000 and more. And I may tell Your Excellency, without any breach of confidence, that some of us who have to work for our livelihood, have very often said that it would be very good indeed if the learned Chief Justice could be induced to give the post of Official Assignee by rotation to half a dozen senior members of the Bar, as it would be very good indeed for them to have a year's holiday getting Rs. 10,000 per month. Relieved from the very heavy work at the Bar, it will certainly be a very good change to have comparatively very light work as Official Assignee for a year getting Rs. 10,000 a month."

In winding up the debate Lord Willingdon said:—

> "I should only like to add to what has been said by my honourable colleague, that we fully appreciate that the Honourable Mr. Patel and the Honourable Mr. Setalvad have originated and produced a debate of extreme importance and great interest. I therefore think that I may fairly say that Government are of opinion that some change is necessary with regard to the present system (hear, hear). What that change should be, as my honourable colleague has said, will depend upon the advice of the High Court, as negotiations are going on now between ourselves and the High Court, and I feel perfectly confident that those negotiations will pro-

duce a satisfactory result. I frankly own that I, as President of this Council, am seriously influenced in my opinion by the terrible suggestion that my honourable friend Mr. Patel made, that this individual who has been up before us this afternoon, gets a higher salary than His Excellency the Governor."

TEACHERS IN PRIMARY SCHOOLS

I also took up in the Council the question of putting primary education on a proper footing. The primary school teachers in the mofussil of the Presidency were paid miserable salaries of Rs. 4 and 5 a month and in some places, they were also working as Post Masters getting some additional remuneration. Ultimately I succeeded in getting these scales increased to a decent amount.

LORD HARRIS

In those days at every meeting of the Bombay Legislative Council, I was putting a large number of questions on a variety of subjects. One day, I got a letter from the Private Secretary to the Governor that His Excellency would be glad to see me at the Secretariat. I went there. Lord Harris spoke to me in an angry tone: "Look here Mr. Setalvad, you have been putting numerous questions which puts a heavy burden on the Secretariat staff who have something better to do than find out all the information you want." I replied: "I am sorry, Your Excellency, but you seem to forget that in answering my questions, Your Excellency and your staff are performing a public duty for which both are handsomely paid, while on my part I am performing a public duty which is purely honorary." This brought Lord Harris to realities and he immediately apologised saying that he did not mean any offence.

As the time for the retirement of Lord Harris came near, some people got busy and planned to hold a public meeting of the citizens of Bombay to express commendation of his administration. There was considerable public oppo-

sition to this move. Dr. Deshmukh, Dr. K. N. Bahadurji and myself took an active part in this opposition. Ultimately, the promoters of the movement saw reason and the meeting that was called was confined to friends and admirers of Lord Harris. One curious incident occurred during this controversy. Some one got printed leaflets containing cartoons and severe criticism of Lord Harris' administration. These leaflets were one morning distributed in Bombay in folded copies of *The Times of India.* There was great excitement over this and the police tried to trace the offender but did not succeed. It was ascertained that some one with numerous copies of the leaflet went early in the morning near the then premises of *The Times of India* and got the distributing boys to put copies in the folds of the *Times* by paying them two annas each.

Some time before his departure, Lord Harris made a tour of various parts of the Presidency. The municipalities of Broach, Surat and Ahmedabad resolved to present addresses to him which was the usual thing to do in those days. Some members of these municipalities filed suits in the local courts asking for an injunction restraining the municipalities from presenting these addresses on the ground that there was no provision in the Municipal Act empowering municipalities to spend any moneys for such a purose. The courts did not grant any injunction but the move was a manifestation of public feeling.

At the time of his departure, the usual invitations were issued to the members of the Legislative Council including myself to go to the Bunder to bid him farewell. I and some other members did not go. The day before his departure, I wrote a letter to Lord Harris informing him of the decision of some of us not to attend the function as a mark of our disapproval of his administration and assuring him that no personal offence was meant. From Aden, Lord Harris wrote to me a nice letter of appreciation of my work as a member of the Legislative Council. He further said that

several officials as well as non-officials had on occasions told him stories derogatory of myself but he took a man as he found him and not as he was described to him by other people. I was much touched by the sincerity and goodwill displayed by this letter. I met Lord Harris again after many years in 1926 in London at Hotel Metropole at a lunch given by the late Jamsaheb Ranjitsinghji. Our meeting was cordial and we talked for a long time over the old days in Bombay.

1895 ELECTION

When the time for fresh elections to the Legislative Council came in 1895, Gokuldas Kahandas Parekh contested the seat with me. It was a most troublesome job to go canvassing to the various municipal towns over the Northern Division. I proposed to Gokuldas to agree not to go personally to all places except the principal ones like Ahmedabad and Surat and to send only canvassing agents to other places. Gokuldas, however, did not agree to this and in the heat of May, we had to travel all over the division.

One or two funny incidents happened. In Ahmedabad, there was a Mahomedan gentleman who was elected by the Ahmedabad Municipality to the Electoral College. He had promised my friends who were working for me that he would vote for me. This time the election was carried out by sending voting papers to the members of the Electoral College instead of their voting in person as was the case in 1893. When this person received the voting paper, he filled it in with my name and brought it to a friend of mine and asked him to receive it and post it to the Commissioner, Northern Division, who was the returning officer. My friend told him that he trusted him fully and that he should send it directly himself. As was ultimately discovered, what he did was that he scored out my name which he had originally written and inserted the name of Gokuldas and posted it to the Commissioner. At the time of the scrutiny of the voting papers in the presence of the agents of the candidates,

this was detected. On that the Commissioner wrote to him inquiring why he had done this. He replied saying that he had not altered the name and that the alteration must have taken place in the Commissioner's Office. Ultimately, the vote was taken as it stood, i.e., for Gokuldas. On the count, I won by two votes.

At Broach there was a Parsi voter, Mr. Nowroji Vakil (popularly known as Thutha, because the lower part of one of his arms had been amputated) who was a pleader. I was in Broach at the time the voting papers were expected to be received by the voters. This man had promised to the gentleman with whom I was staying (an old friend of my family and a leading pleader himself) that he (Nowroji) would vote for me. We had heard that pressure was being put upon him by friends of Gokuldas to vote for their candidate. In order to make sure of the vote, we had arranged that Krishnalal Jhaveri should go with this voter to the Post Office to get delivery of the packet containing the voting paper and bring it and the voter with him to the gentleman with whom I was putting up. After the packet containing the voting paper was received, Mr. Vakil who had promised to come to my host with the voting paper gave Jhaveri the slip and went to his own house telling him that he would come later. The next morning when I came out of my bed room and went down to take tea with my host, I was very much surprised to see Nowroji sitting with my host and taking tea. I was told that my host got up very early while it was still dark and went to Nowroji's house, woke him up and brought him to his own house with the voting paper. The voting paper was then filled in and signed in our presence and it was sent.

In 1897, Gokuldas beat me at the election and I was out of the Council for six years till I got elected again by the University in 1903. My absence from the Legislative Council was referred to both by Lord Sandhurst, the Governor of Bombay and the

Finance Member, the Hon'ble Mr. Nugent. At a meeting of the Bombay Legislative Council held on August 4, 1897, after referring to the death of Mr. Jhaverilal Umashankar Yajnik who was a member of the Council, the Hon'ble Mr. Nugent said: "Mr. Setalvad too has been removed, happily not by the hand of death but as a consequence of the transfer of the affections of the municipalities of the Northern Division, and we have no longer the benefit of the investigations instituted by his microscopic eye and active inquisitive mind. He has ceased for a time at least to flutter the dove-cots of the Bombay Courts, and to search with unremitting vigilance for the weak points in our harness and defective joints in our armour." Lord Sandhurst who presided over this meeting, referring to those who had ceased to be members said: "Among the latter is Mr. Setalvad with his great anxiety for information, with which I have never once quarelled. He is an energetic young man and I have no doubt that during the time he is absent from the council, he will find other fields for the talents and energies he undoubtedly possesses."

During the six years that I was out of the Legislative Council, a great controversy raged over the Bombay Land Revenue Bill. Although I was not in the Council, I had throughout worked under the guidance of Pherozeshah Mehta in the strong public opposition that the measure met with.

LAND REVENUE BILL

In the year 1901, an official bill was introduced in the Bombay Legislative Council to amend the Bombay Land Revenue Code of 1879. Under that Act, land was held and occupied in perpetuity conditionally only on the payment of the amounts due on account of the land revenue for the same and the right of occupancy was declared to be heritable and transferable property. Under the guise of protecting the ryots from the clutches of the money-lenders, Government sought to do away with the right of alienation and

to arm the executive with powers to grant land forfeited to the crown, on such terms and for such period as the Collector might prescribe. This inroad on the proprietory right of the landholder evoked general opposition and protest, as it was apprehended that the measure was designed covertly to establish state landlordism by degrees. There were many public demonstrations against the measure. A monster meeting was held under the presidency of Pherozeshah Mehta in the Town Hall on 27th July, which was attended by 700 delegates from all parts of the presidency. When the Council met at Poona to consider the bill, the atmosphere was surcharged. The member in charge of the bill accused the leaders of public opinion who opposed the bill, as ignoring the first principles of reason. Pherozeshah moved an amendment to refer the bill for opinion to various officials, associations and individuals. He described the bill as a flank movement by which the sole ownership of the State might be quietly and effectively established and declared. Muir Mackenzie twitted the opposers of the bill as having never spent any appreciable portion of their lives in contact with the Indian ryot in his village and extolled the intimacy of civil service officials with the ryots. Pherozshah, when he came to reply, gave a very spirited answer to these attacks on educated public men in the following words:

> "The English official moves among the natives isolated even when not unsympathetic, ignorant, even when not uninquisitive, a stranger and a foreigner to the end of the chapter. My Lord, I can, therefore, truly say that it is I and my native colleagues who can claim to speak at first hand, and of our own personal and intimate knowledge and experience of the feelings and thoughts of the ryot, his prejudices, his habits of thought, his ways of life, his ambitions and his aspirations. In speaking on this bill, it is we who represent the real views of the agricultural masses, not the isolated English official."

The amendment was, however, defeated by 14 votes to 9. Thereupon Pherozeshah, declaring that he and his non-official colleagues were not prepared to take the responsibility of enacting the measure walked out of the hall. Among those who walked out with Pherozeshah were: Sir Bhalchandra Krishna, Gokuldas Parekh, Daji Abaji Khare and G. K. Gokhale.

RE-ENTER COUNCIL

In 1903, I stood for election to the Bombay Legislative Council from the University constituency. Dr. Temulji Nariman was put forward as a rival candidate by official circles and there was a keen contest. Most of the European members of the Bar who were members of the Senate voted for the rival candidate, but Inverarity and Branson voted for me. Even some of the European Judges and members of the Executive Council voted for Nariman. Badrudin Tyabji and Chandavarkar voted for me. In the result, however, I obtained 127 votes as against 88 for Dr. Nariman. The Governor came to the rescue of Nariman and nominated him as a member of the Council. From 1903, I was re-elected from time to time by the University and was a member of the Legislative Council uninterruptedly till 1915 when I was elected to the Imperial Legislative Council in the vacancy caused by the death of Mr. G. K. Gokhale.

MORELY-MINTO REFORMS

Under the Morley-Minto Reforms, the Legislative Councils were further expanded and various constituencies were given the right of directly electing their representatives to the Council instead of merely making a recommendation for nomination by the Governor. An Indian Member of the Executive Council in every province as well as in the Centre was added. The object underlying the introduction of an Indian Member of the Executive Council was that the Indian point of view might be heard in the Executive Government and influence its decisions. The real Indian point

of view could only be heard if the Indian Member was chosen from the ranks of public men. The object and purpose of having Indian members was, however, frustrated by the actual appointments that were made except in the case of the appointment of Sinha as Law Member in the Central Government.

There was great opposition to the appointment of an Indian member to the Executive Council of the Governor-General. King Edward VII himself expressed strongly to Lord Morley his disapproval of such a step. Lord Morley, however, was adamant about it and the whole Cabinet agreed with him and the appointment was made. The London *Times* expressed disapproval of admitting an Indian to the Executive Council of the Governor-General. It was also said at the time that Lord Kitchener who was the Commander-in-Chief in India, also raised strong objection to the appointment of an Indian and is reported to have said that with the presence of an Indian in the Council, he would not feel quite comfortable in mentioning at the Council meeting important military matters which necessitated great secrecy. Lord Morley in his letter to Lord Minto said:

> "The *Times* shakes its head a little......they shed tears over the fact that Sinha has not some score of the rarest political virtues in any world—courage, patience, tact, foresight, penetration, breadth of view, habit of authority, and Heaven knows what else—just as if all those noble qualities were inherent in any third-rate lawyer, that I could have fished out of Lincoln's Inn, or even as if they are to be found in *all* members of the Executive Council as it stands today."

In Bengal, a zamindar, the Maharaja of Burdwan, was appointed, in Behar the Maharaja of Darbhanga was appointed and in U.P. the Raja of Mahammudabad. In Madras, the Raja of Bobbilli was the official nominee. All these people estimable though they were in their own spheres, could not in any measure be regarded as reflecting public opinion in the country.

In Bombay, the obvious choice should have been Pherozeshah Mehta but his appointment was too bitter a pill for Sydenham to swallow. Pherozeshah being thus ruled out, there was general expectation that Narayan Chandavarkar, then a Judge of the High Court, would be invited to take the post. He had been in public life and was the President of the Indian National Congress in the year 1899. This expectation was so general that Narayan himself believed that the post would be offered to him. Fully expecting this, he spoke to Chaubal who was then Government Pleader that if he (Narayan) became Executive Councillor, he would like Chaubal to succeed him as a Judge. Lord Sydenham, however, had made other plans. He did not want any person who was or had been in active politics in India to be a member of the Executive Council. He had, therefore, recommended the appointment of Chaubal. At the time of this recommendation, Chaubal was in England on a holiday and the Secretary of State accepting the recommendation of Sydenham intimated to Chaubal that they proposed to appoint him and Chaubal accepted the appointment. He was asked, however, to keep the matter strictly confidential till the appointment was officially announced. It was after Chaubal's return to India that the interview between Chandavarkar and Chaubal above referred to took place. Chaubal was placed in a very embarrassing position. He could not disclose to Chandavarkar what had already happened and had to listen quietly to what Chandavarkar said. Within a short time after this, the appointment of Chaubal was announced one morning.

In May 1910, when I was in London I saw Morley, the Secretary of State. He asked me how the Indian appointments to the Executive Councils were received. I told him that there was considerable disappointment over these appointments because all persons connected with the public life of the country were designedly excluded and in many cases persons who had not the necessary equipment had been appointed, and cited the appointments of Bobbilli,

Burdwan and Muhammadabad. Morley said he was very sorry to hear that but they had to rely on the recommendations of the provincial Governments. I said that the Governors strongly disliked the introduction of Indians into the Executive Councils and therefore they chose convenient people. I further told Lord Morley that the only acceptable appointment was that of Sinha as Law Member of the Viceroy's Executive Council.

A temporary vacancy occurred when Chaubal was drafted to the Public Service Commission. Sydenham in making an acting appointment which lasted for three years, again deliberately refrained from appointing any one from the public life of Bombay but got Prabhashankar Pattani from the Bhavnagar State to act for Chaubal. A curious incident occurred in this connection. The Bombay Legislative Council was in session in Poona and one day Chaubal asked me to lunch with him. Several members of the Legislature were present at the lunch and Prabhashankar Pattani was also there. The conversation naturally turned to the acting appointment that was about to be made when Chaubal went on deputation on the Public Service Commission. In the course of the conversation, I said that during the regime of the then Governor, there was no chance of a proper appointment being made and that he (the Governor) would find out somebody unpolluted by British Indian politics. I wonder what Pattani must have felt at this remark of mine. His appointment was announced within a few days after this incident. Things changed when Lord Willingdon succeeded Sydenham and the successor to Chaubal was chosen from the ranks of public men. Sir Ibrahim Rahimtoola was appointed.

From 1913 to 1915, I continued my vigilance regarding various questions of importance both in the field of education and other important subjects. When in the budget discussion in July 1910, Raffiuddin Ahmed pleaded for more

Mahomedans being employed in higher responsible posts including those of Judges of the High Court, I said:—

> "An institution like the High Court is not a representative institution. The High Court is an institution for doing justice between man and man. I submit that the only qualification for filling up appointments must be efficiency and nothing else. This is the first thing to be looked to in regard to the High Court and judicial appointments of the character mentioned by the Hon. Mr. Raffiuddin Ahmed. It does not matter a bit whether a European or a Parsi or Hindu or Moslem is appointed a judge or a magistrate provided he is the best efficient and qualified person available.
>
> "Mr. Raffiuddin accused the Bombay Government of being backward. I think that what he meant was that in regard to High Court appointments and those of judges of other Courts in the Presidency, Mahomedans were not appointed in as large numbers as he wished. In making that charge against the Bombay Government, Mr. Raffiuddin forgot the history of the appointment of Mahomedan Judges in the High Court. Not long ago we had a highly qualified Mahomedan Judge on the Bench of the High Court. I mean the late Badruddin Tyabji. He was appointed and justly appointed not because he was a Mahomedan but because he was the best available lawyer under the circumstances then existing. As a Judge he enjoyed the confidence of all classes of people, and parties were very willing and anxious to have their cases heard by him because he was an efficient lawyer and was possessed of sterling independence and not because he was a Mahomedan. I hope and trust that in regard to these high appointments, the view Government will keep in mind will be efficiency. I feel strongly that it will be an evil day if ever the idea is allowed to prevail that in filling these offices, it was not efficiency but communal interests that were to be kept in view."

I said this in 1910. In subsequent years Government have succumbed more and more to the cry of communal representation in the services including the judicial at the sacrifice of efficiency.

After the report of the Decentralisation Commission, it was urged by various Governments including the Government of Bombay that the local Legislative Councils should be given the power of taxation. At the meeting of the Legislative Council on July 25, 1911, Pherozeshah Mehta strongly maintained that no such devolution of powers of taxation should be made until the elected representatives of the people had an effective voice in the Legislatures. He said:—

> "The public of this province would entirely agree with these views if the enlarged Council were so constituted as to represent the direct voice of the people, because in the matter of taxation it is the voice of the people which ought to be conclusive and I assure Your Excellency that if it were thus constituted, nobody would have been more ready to agree with Your Excellency than I would have been. But taking things as they are, and while the Council is in the process of development, nothing would be more disastrous than to invest it with the power of taxation."

Sir Temulji Nariman sneered at educated people making demands for increased expenditure on education when according to him more money should be spent on medical relief. Referring to this I said on July 26, 1912:

> "My Honourable friend, Dr. Temulji Nariman, yesterday, with some heat urged your Excellency's Government not to give a single pie more for the extension of primary education until nurses and midwives had been provided and until the various other medical and sanitary reforms he advocated had been carried out. In doing so my honourable friend sneered at those whom he called 'educated leaders'. I do not know

whether he claims himself to be one. He complained that they shouted, but complaining as he did of their shouting, we found him soon afterwards following that vicious example. For did not my Honourable friend shout to be heard? It is very easy, Your Excellency, to indulge in sneering, but it is forgotten that these educated leaders through good report and through evil report and in spite of calumny and abuse, have striven their best in the interests of their country and have succeeded so far in securing reforms and benefits of which advantage has been promptly taken by those who have all these years sneered and are still sneering at them."

The policy of raising fees in Government educational institutions was resisted by Pherozeshah Mehta and myself. Speaking on the resolution protesting against the raising of fees, in the Bombay Legislative Council on March 15, 1911, Pherozeshah Mehta said :—

"Take England, the noble institutions for secondary and higher education there are provided, by whom? By the Kings, by the high State dignitaries, by the high ecclesiastics, by the great landlords—in fact, by all those people who in the older days when these institutions were established, were in the position of, if I may use a comprehensive term, great landlords and the possessors of the great wealth of the country, because in those days wealth went with land. Those were the people who founded the noble benefactions which now serve even in a rich country like England people who come from by no means an impoverished class with secondary and higher education. I will ask Your Excellency to consider carefully, in coming to a decision on points of unlimited liability, who stands in this country in the position of Kings, great landlords, the great State dignitaries and the great ecclesiastics, but the Government? It is the Government in India who is the great and universal landlord. The Govern-

ment as constituted in this country occupies the same position which the great landed aristocracy, those great magnates and dignitaries of England once occupied. Therefore it is that we have always contended that a special and peculiar liability rests upon the English Government in India to make liberally and generously the same provisions which were so liberally and so generously made in England. That is the function which we ask the Government to perform in this country."

Speaking on the resolution for the establishment of a Government Arts College at Dharwar, Pherozeshah Mehta said at a meeting of the Bombay Legislative Council, held on September 28, 1912, as follows :—

"For a long time it was maintained by Government that they ought not to have the remotest connection with institutions for higher education in this Presidency, and acting on that policy a proposal was brought before this Council by the Revenue Member to reduce the small grant of Rs. 15,000 which we used to make to the University of Bombay, to Rs. 10,000. We strongly protested against the action of Government, and in so doing our reward was that it was reduced to Rs. 5,000 and when we made further protest against that we were told that even the grant of Rs. 5,000 would be done away with. That was the policy of the Government in regard to higher education in the early nineties. It was a matter of profound regret to us that Government should commit such a serious blunder in the attitude which they had taken up in this respect. We then pointed out that it was not only an educational blunder, but a political error for the State to take up an attitude of that sort with regard to the momentous question of higher education in this Presidency. It is and must be a source of great gratification to the people of this Presidency that the whole policy of Government has now been reversed in

this matter, that they should have the closest relation with the progress of higher education in this Presidency: and that they should recognise that they have a high responsibility in the matter. I maintain that it is a matter of public policy that Government's connection with higher education should be of the closest and most responsible character."

Supporting the resolution I said :—

"I am afraid that my Honourable friend Mr. Rafiuddin has entirely failed to grasp the remarks made by the Hon'ble Sir Pherozeshah Mehta, and I am also afraid that Mr. Rafiuddin's want of knowledge of the real policy of Government as laid down by the Education Commission led him to make the remarks he has offered. The Hon'ble member seemed to imagine that when Sir Pherozeshah referred to the past policy of Government, what he referred to was the policy of discouraging higher education. I might say that if the Hon'ble Member took the trouble of studying the proceedings of the Education Commission and the discussion that followed and the enunciation of policy that took place, he would find that the policy of Government was not at any time to discourage higher educacation. The policy then was this that Government thought that the responsibility of higher education should be left more to private enterprise than to Government, and the policy that was laid down was that as far as possible Government should encourage private enterprise to take over and manage institutions for higher education. That was the policy which Sir Pherozeshah had referred to, and this policy was well known to everybody who had taken the trouble to study it. That was the policy laid down and followed in those days, and in consequence of which Government tried to disconnect themselves from the management and control of institutions like colleges and high schools. The Hon'ble Sir Pherozeshah was right in

pointing out that it was certainly a matter of great satisfaction that this policy had been changed. Government has now reversed the former policy and assumed closer connection with higher education."

HINDU DISPOSITION OF PROPERTY ACT

After I was elected to the Imperial Legislative Council, I introduced in February 1916, a bill entitled "Hindu and Muslim Disposition of Property Bill". After introduction, the bill was circulated by Government for public opinion. As decided by the courts, a Hindu or a Muslim could not make a gift to an unborn person. Thus, a Hindu or a Mussalman, who had only a daughter and wanted to put his property in trust, so as to give a life-estate to his daughter and then an absolute estate to her children (some of whom might have been unborn during his lifetime) was precluded from giving effect to his desire under the law as it stood, while members of other communities were under no such disabilities. The provisions of the bill enabled Hindus and Muslims to make bequests to or trusts in favour of unborn persons subject to certain limitations provided in the Transfer of Property Act. As far as the Hindus were concerned, there was general approval of the bill, although from orthodox quarter some opposition was manifested. As regards Muslims, there was considerable opposition which was really based on a misapprehension of the provisions of the bill and its effects. The usual cry of 'religion in danger' was raised and the real issue was thereby fogged.

When the Bill came to the Government of Bombay for eliciting public opinion, some of the Muslim bodies objected to it.

One night, I was dining at Government Houce and Suleman Abdul Wahed, the head of the firm of Ladha Ibrahim & Co., was sitting next to me. Conversation turned on the bill. As in his view the bill interfered with Muslim law he asked me to leave the Muslims out. I put to

him the following question: "You may have sons who are married and you may like to make a trust whereby you would tie up part of your property for the children of your sons, some of whom may now be in existence and others may be born after your lifetime." He said, "Certainly, I would like to do so." I told him that that was exactly what he could not do under Muhammedan law and that my bill would enable him to do so. He then said, "I quite agree that the Mussalmans should accept the bill." Khoja and Memon wills and Trust Deeds making provisions for unborn persons came into the courts from time to time and provisions in favour of unborn persons were declared invalid. As Muslim opinion, however, uninformed, was against the Bill being made applicable to them, at a meeting of the Imperial Legislative Council held on September 5, 1916, I moved that the Bill be referred to a Select Committee with instructions to confine the operation of the Bill to Hindus, subject however, to a discretion in the Committee to consider whether powers should be reserved to the Governor-General in Council to apply, by notification, the provisions of the Bill to Khoja Mussalmans.

In the year 1917, general elections to the Imperial Legislative Council took place and for the two seats to be filled in by the members of the Bombay Legislative Council, there were four candidates, Vithalbhai Patel, Dinsha Wacha, Ibrahim Rahimtoola and myself. Wacha and Ibrahim were elected. At the same time, Jinnah stood for election for the Imperial Legislative Council in the Muslim constituency of the Bombay Legislative Council. Raffiuddin Ahmed contested the seat with him and Jinnah was elected. Raffiuddin then filed an election petition challenging the election of Jinnah. An enquiry was thereupon held which was conducted by Mr. Percival, the then District and Sessions Judge at Poona. At the enquiry, I gave evidence on behalf of Jinnah as I was present at the bungalow where Jinnah had put up, on the evening on which it was

alleged that certain incidents took place. The allegations were held to be unfounded and Jinnah's election was confirmed.

Sometime afterwards, I received a communication from the Legislative Department saying that His Excellency the Viceroy was pleased to nominate me as a member to pilot the Hindu Disposition of Property Bill through all its stages in the Council. The report of the Select Committee was considered at a meeting of the Council held on September 27, and the bill, as amended by the Select Committee, was passed and entitled the "Hindu Disposition of Property Act". By Section 5, power was given to the Governor-General to extend the Act to Khojas if, in his opinion, the Khoja community in British India or in any part thereof desired that the provisions of the Act should be extended to them. This enabling provision did not come into operation owing to division of opinion on the subject among the Khojas. It has now become nugatory by the passing of the Shariat Act the effect of which was that the applicability of Hindu law by custom to Khojas and Memons in Bombay which existed for close upon a century was abrogated.

INDIAN LEGISLATIVE ASSEMBLY

During the latter part of 1923, the Swarajya Party decided to contest the elections to the legislatures both Central and Provincial, and put up their candidates to contest the seats. I stood for election by Bombay City which had to return two members to the Central Legislative Assembly. Vithalbhai Patel, Dumasia and Jamnadas Dwarkadas were the other candidates. Vithalbhai and Dumasia were elected. Some time after the election, Governor Lloyd wrote to me saying that he had an enquiry from Lord Reading whether I would accept nomination to the Central Assembly. I told Lloyd that I would accept nomination on the distinct understanding that I would be free to vote as I liked. I was assured that I would be free to do so and I accepted nomination to the Central Assembly.

In the Budget Session on March 5, 1924, I strongly criticised Government for their policy which instead of encouraging the constitutional party and strengthening their influence in the country, strengthened the hands of those who wanted to wreck the constitution. I said :—

> "Hon'ble Members will remember that in the year 1919, when the new Reforms Act was passed, although all parties were united in the opinion that the reforms were inadequate, the Liberals and Independents agreed to work the reforms loyally and some of them at considerable sacrifice accepted office because they believed that it was their patriotic duty to work the reforms in right earnest. And still, Sir, how were these Liberals and Independents, who co-operated with Government in working the reforms to the best advantage, treated last year ? These people, in spite of public opprobrium, had agreed to do what they thought was right and in the best interest of the country—but everything was done by creating the political crisis of last year—everything was done by the Government however unwittingly, to discredit the party that was standing by the constitutional reforms, by constitutional means. The action of the Government materially tended to discredit them in the eyes of the country and to strengthen the party that was against constitutional progress and constitutional methods. The Government did everything, however unwittingly, to increase the feeling of hostility against and distrust in the good faith and sincerity of Government throughout the country. And that again, Sir, has brought its result. And what is that ? The result is that you are now face to face in this very Assembly with a party that has come avowedly to wreck the reforms if they can. This, I say Sir, is the result of the policy that Government adopted last year of not heeding the voice of those who were their friends, of those who wanted to stand by the constitution, of those who wanted to work the reforms honest-

ly and in right earnest. You threw them to the wolves. You discredited them with the country, and you are now reaping the results of your mistaken policy. Here you are, as I said, face to face with a party that wants to obstruct ; you are here face to face with the possibility of your whole Budget being thrown out (hear, hear)."

Mr. V. J. Patel here interrupted: "And yet you will help them."

I continued: "I am told by a prominent member of that party, "And yet you will help them." Sir, I and those who think with me, are prepared to help the Government in the progress of constitutional reform in this country, whatever the opprobrium they may have to bear from other parties who may differ from them. My party, Sir, is not a party of supporters of Government; it is a party of those who are prepared to oppose and will oppose Government when they think Government are in the wrong, as vehemently as any Swarajist in this Assembly; but they will also support Government when they believe the action of Government is necessary, in the best interests of the country; and that is what, I, Sir, and those who think with me of the Liberal and Independent Parties stand for in this Assembly. All that I was pointing out for the moment was this, that Government by their action last year did everything to weaken the hands of that constitutional party, did everything to give strength to the other party and I hope, Sir, that Government will take to heart the lesson of what happened last year and the effects of it and will not blunder again into doing anything to weaken the hands of the constitutional party in this country."

All the major demands of the budget were negatived by the Assembly.

PRESIDENT OF THE LEGISLATIVE ASSEMBLY

At the end of April 1924, I had arranged to spend the summer vacation at Simla. Mr. Taraporewala who due to some difficulty was unable to proceed to Europe as he intended, came with me to Simla. Sir Frederick Whyte, President of the Legislative Assembly, had gone on leave and the Deputy President, Mr. T. Rangachari was also not in the country. An emergent session of the Legislative Assembly had to be called for the purpose of considering the Steel Industry (Protection) Bill, the main purpose of which was to give a bounty to the Tata Iron and Steel Works at Jamshedpur in order to enable it to stabilise and withstand foreign competition.

It appears that Lord Reading had written to Sir Leslie Wilson to inquire whether I would agree to act as President. By the time that letter arrived in Bombay, I had already left for Simla. The Viceroy having learnt that I was already in Simla sent for me and asked me to take up the acting Presidentship. I asked for twenty-four hours' time to give an answer, but I told him that as I was in the midst of a heavy case in the Bombay High Court, the hearing of which was to be resumed on the opening day of the Courts after the vacation, I must leave Simla in sufficient time to reach Bombay on the opening day, viz., June 9. He agreed to this and on the next day, I expressed my willingness to act as President and I assumed office. The session was to be held on May 27, 1924. In the interval I was busy admitting questions and considering notices of amendments to the bill that had come in.

When I took my seat, Dr. Gour welcomed my appointment in suitable terms. Sir Alexander Muddiman, the Leader of the House followed and said :—

> "I should like to add my congratulations to you on your appointment to the post of President. I can lay claim to be a brother of the brush, for I was President once, and then I used to sleep undisturbed and un-

worried, and some times I wish, and I dare say I shall wish even more as time goes on, that I still occupied the President's Chair. But, apart from that, Sir, I have known you for many years, though it is more years ago than I care to count since we sat on Select Committees together and endeavoured to unravel legal problems. It is therefore with great pleasure that I offer you my most hearty congratulations and I am sure the congratulations of those who sit beside me."

I replied as follows :—

"You will permit me, gentlemen, to tender my thanks to you for all the kind references that have been made to my appointment as temporary President. I assure you, gentlemen, that I realise the responsibility that I have undertaken in taking this office, though for a temporary period, because the President, besides being the spokesman of this House, is also the custodian of the privileges and dignity of the House; and I may assure you, gentlemen, that during the short time that I will be occupying this Chair, I will endeavour to do all that lies in my power to maintain the dignity, the privileges, and above all the independence of this House. I am sure, gentlemen, that in the discharge of my duties, I will receive from you all the co-operation, the assistance and the indulgence that are necessary to enable me to discharge my duties in a proper manner, and I am sure I will receive such assistance and co-operation from all sections of this House, for the Chair is outside and above all parties. Gentlemen, during the course of the debates in which we will be soon launching, there may be occasions on which I may have to decide matters, and my decisions may not meet with the commendation or approval of some of you, but of this I may assure you, that whatever decisions I give, they will be the result of anxious and impartial consideration according to my own lights. And if, as I have said, any of those decisions

do not commend themselves to some of you, I will beg of you to put it down to the fact that no human being is infallible, not even the President of the Assembly."

There were numerous amendments to the Bill which consisted only of a few sections and I had to decide after hearing the members concerned what amendments were in order. The bill was referred to a Select Committee and the report of the Select Committee was taken into consideration on June 2. During the course of the debate, an attempt was made to delay the passing of the bill by a motion that the Report of the Select Committee be circulated for public opinion. This motion was rejected by the House. After that Mr. Devki Prasad Sinha raised a point of order that "any honourable member of this House who may be interested in the Tata Iron and Steel Company either as a shareholder or as a Director should not be allowed to take part in the proceedings of this meeting of the Assembly and should not be allowed to guide its deliberations in the capacity of the President of this Assembly". After hearing many members on this point of order, I gave my ruling to the following effect :—

"In the House of Commons objection has been raised to members, having a direct personal interest, voting or taking part in the debates, only in case of private Bills and then the objection has on a good many occasions not been upheld. My conclusion is that in this case I cannot uphold the objection raised by Mr. Devki Prasad Sinha. This is not a private Bill designed to promote the interest of the Tata Iron and Steel Company. It is a Bill brought in by the Government involving a question of public policy to give protection to the steel industry.

"Further, we have to bear in mind the action that the House has already taken during the two days' debate when we appointed as members of the Select Committee of this House various members who de-

INDIAN LEGISLATIVE ASSEMBLY (1925)



Front Row (Left to right) sitting —Prince Akram Hussain Sardar B. A. Dalal Moulvi Abdul Kasem Chimanlal Setalvad Sir Campbell Rhodes, Mr. Darcy Lindsay Sir Basil Blackett Dewan Bahadur T. Rangachariar Sir Alexander Muddiman Sir F. White (President) Pandit Motilal Nehru Mr L. Graham Mr M. A. Jinnah Mr K. C. Neogy Sir Sivaswamy Iyer Mr V. J. Patel Dr S. K. Datta Mr. K. Ahmed and Mr N. M. Joshi

clared that they were shareholders of the Tata Company. I must therefore overrule the objection."

The Bill was passed in the Assembly on June 5, and was sent up to the Council of State. I then left for Bombay and asked Mr. Neogy, one of the panel of Chairmen, to preside in my absence.

DEBATE ON LEE COMMISSION REPORT

In 1923, a Royal Commission was appointed with Lord Lee as President to consider various grievances regarding salaries and other allowances of the higher services in India. I was offered a seat on the Commission and I accepted it. However, when I resigned my membership of the Executive Council of the Governor of Bombay in June, 1923 and reverted to practice, I resigned my membership of the Commission and suggested the name of Mr. N. M. Samarth to take my place. Mr. Samarth was appointed. When the Commission came to Bombay I was invited to give evidence. Sir George Lloyd had given his evidence a few days before I was examined and it had filtered through that he had made certain complaints against the Indian councillors and ministers. In the course of my examination, some members without mentioning the source of the information, put to me what Sir George had alleged. I categorically contradicted this and pointed out that on the contrary, the Governor was at times responsible for actions of the character he had chosen to allege against his Indian colleagues.

After the report of the Lee Commission was published, Sir Alexander Muddiman initiated a debate on it in the Central Legislative Assembly on September 10, 1924. Speaking during that debate, while admitting that some relief was due to the members of the Civil Service and that an admixture of English and Indian elements was for some time desirable, I raised the vital question about the recruitment and position of the Indian Civil Service. I said :—

"What is felt and rightly felt, I submit, is this, that the extent of such association of the European element and the terms and conditions on which a contented and efficient service both of Europeans and Indians can be secured should be matters for determination by the people of India at every stage through the Government of India and its Legislatures, and are not matters to be determined by some authority outside the country placed thousands of miles away. I may assure Government that it is not the desire of the people to have Indianisation of the services merely in the sense of the substitution of the European element by the Indian. What is felt is that so long as the services, whether manned by Europeans or Indians, are recruited and maintained under the system at present obtaining, India can be no nearer to self-government in the sense of having its own agency of government. In fact, what is desired is that the services should be in the real sense services as they are in other countries and not the masters and arbiters of policy."

FIRST ELECTED PRESIDENT—VITHALBHAI PATEL

Under the Government of India Act at the end of the first four years of the life of the new constitution, the first nominated President had to be replaced by a President elected by the members of the Indian Legislative Assembly. Accordingly, in August 1925, the election took place. Patel and Rangachari were the two candidates. There was very brisk canvassing and in the result, Patel was elected by a majority of two votes over his rival. When he took his seat, Mr. Patel after assuring the members that he would observe strict impartiality in dealing with all sections of the House irrespective of party considerations, said as follows:

"Misgivings have been expressed in some quarters, fears have been entertained that I would not meet the Viceroy, that I would do this, and that I would do that. I assure you my friends, that I am going to do nothing

of the kind. If the duties of my office require me to see Viceroy ten times a day, I am here to do so. If for the discharge of my duties it is necessary that I should see every official Member of this House, I will meet him. None need have any doubt about it, and none need have any apprehension about it."

Government having delayed taking any action on the vote of the Assembly on the Muddiman Report on reforms ultimately on March 8, 1925 Pandit Motilal Nehru reminded Government of what he had said when his party came to the Assembly in 1924. He had then said: "We have come here to do something which we have not been doing so far. Sir, we have come here to offer our co-operation, non-co-operators as we are, if you will care to co-operate with us. That is why we are here. We are your men. But if you do not, we shall like men stand upon our rights and continue to be non-co-operators." Having recalled this utterance he observed that the co-operation that they had offered had been spurned by Government and that, therefore, it was no use their continuing in the Legislative Assembly and he and his party withdrew from the House.

On this, President Patel declared that as the strongest party had vacated the Chamber, the Assembly ceased to retain that representative character required by the Government of India Act. Its province was merely to register the decrees of Government and, therefore, it was for the Government to consider whether this Assembly should continue to function. He asked the Government not to introduce any controversial legislation, as otherwise he might be forced to use the extraordinary powers given to him under the Act of adjourning the House *sine die.*

Some non-official members who did not belong to Motilal's party resented these remarks of the President as a reflection on them and they interviewed Mr. Patel the same night. The next day, Mr. Patel made the following statement :—

"The remarks which I made yesterday have been taken by several non-official members of this House as a reflection on them. It is my duty to assure them that I did not mean to cast any reflection on them. What the Chair intended to emphasise was that the Government should not take advantage of the numerical weakness of the representatives (of the people) in the House, and bring forward measures of a highly controversial character, except such as were necessary for the discharge of their responsibilities and the carrying on of the administration. I might add further that I felt, on reflection, that the Chair should not have made reference to its own powers, or have used language which might perhaps be construed as a threat to the Government, but should have awaited further developments before deciding on my course of action."

As I was going to Europe in 1926, during the time the election to the Central Legislative Assembly was to be held, I did not seek election.

PART 6 POLITICS

6. - - - - - - - - - POLITICS

MARQUESS OF RIPON

AS the political awakening of India was stimulated by the liberal policy of Lord Ripon as Viceroy and as certain exciting events happened during his Viceroyalty, it is necessary to refer to that policy and those events.

When at the general elections in England in early 1880, Gladstone and his Liberal Party again came into power, Lord Lytton who was the then Viceroy of India was recalled. Lord Lytton had made himself very unpopular by his various illiberal acts, notably among them, the Vernacular Press Act whereby the Vernacular Press was muzzled by various restrictions put upon it from which the English Press was free. His Afghan policy was also disapproved by the Liberal Party.

The appointment of Lord Ripon to succeed Lytton was announced and he arrived in India in June 1880. Ripon was a pious Roman Catholic and very liberal in his views. Soon after assuming office he repealed the Vernacular Press Act. In his letter of February 19, 1881 to Lord Hartington communicating his decision to repeal the Act he said: "The fact is that the official in India regards the Press as an evil, necessary perhaps, but to be kept within as narrow limits as possible. He has no real feeling of the benefits of free discussion." Lord Ripon was the father of local self-government in India. He freed the municipalities and local boards from official control and introduced the principle of election into those bodies and threw open the office of the President of those bodies to non-officials. In those days, the entrance of Indians to the Indian Civil

Service was very difficult as the examinations were held in England and the age-limit of candidates was fixed at 18. Ripon was in favour of simultaneous examinations but he could not persuade his own Council as well as the Home Government to agree to the change. He, however, succeeded in getting the age-limit raised from 18 to 21 thus affording better facilities for Indians to compete at the examination in London.

When Sir Richard Garth, the Chief Justice of the Calcutta High Court went on leave, Ripon appointed Sir Romesh Chunder Mitter to act as the Chief Justice. There was great opposition from Europeans against this appointment and even Sir Richard Garth himself objected to the appointment.

THE ILBERT BILL

Lord Ripon's Viceroyalty will, however, be always remembered for the prolonged and acrimonious controversy over what was called the Ilbert Bill. Sir Courtney Ilbert was the Law Member who piloted the Bill through the Imperial Legislative Council. The Bill was designed to remove certain distinctions based on the race of the judge in the matter of the trial of European accused. While a European magistrate or judge could try European offenders, an Indian sessions judge, district magistrate or magistrate was by law debarred from trying European offenders. The bill in draft was generally approved by Lord Ripon's Executive Council members as well as by almost all the Provincial Governments. The Bill was introduced in the Imperial Legislative Council in February 1882.

Within a few weeks, the whole of the British community joined in a virulent denunciation of the Bill. A monster public meeting was held in the Calcutta Town Hall when speeches in intemperate language and beyond all limits of decency were made. Similar meetings were held all over the presidency of Bengal and the Anglo-Indian and European Defence Association was formed. The non-offi-

cial European community boycotted Ripon's levees and it was proposed to boycott Government loans. On his return to Calcutta from Simla, the Viceroy was openly insulted in the streets by planters who had come from the mofussil.

A correspondent in the *Englishman* said: "The only people who had any right in India are the British. The so-called Indians have no right whatever." The cry of European women in danger was also raised and one Meredith Townshend, former editor of the *Friend of India* wrote in the *Spectator*:

> "Would you like to live in a country where at any moment your wife would be liable to be sentenced on a false charge of slapping an ayah to three days' imprisonment, the magistrate being a copper-coloured Pagan who probably worships the Linga, and certainly exults in an opportunity of showing that he can insult white persons with impunity?"

A Ladies Committee was also formed to oppose the Bill. Lord Ripon and some of the members of his Council as well as the Home Government remained firm. Ultimately, however, the Bill was modified by extending the power to try European offenders only to Indian sessions judges and district magistrates and giving such European offenders the right to claim a jury.

Lord Ripon and his Government were largely influenced in accepting the compromise by the desire to avoid the risk of a street row in Calcutta organized by Europeans. Lord Ripon himself in his letter (December 22, 1883) to Lord Kimberley said: "I do not deny, however, that the great weakness of Government for dealing with a European disturbance weighed with me as it did with my colleagues. I had no idea till I came to Calcutta that the European Police Force at the disposal of the Bengal Government was so very small (between 60 and 70 men all told). In any riot, the least serious, we should have had at once to call out the troops and I felt and feel still that to

employ European soldiers against Europeans in this country would be a step of the gravest kind."

When Ripon relinquished his office in December 1884, a few months before his full term of five years, he had so endeared himself to the Indian population by his various statesmanlike acts that there was a spontaneous outburst of demonstration of goodwill. His unpopularity with his own countrymen was completely eclipsed by the affection with which he had inspired the whole Indian community and his struggle over the Ilbert Bill gave the finishing incentive touch to Indian appreciation. His journey from Calcutta to Bombay was one triumphant progress in which Indian gratitude expressed itself with touching and tumultous unanimity and sincerity. In his letter to Lord Northbrook on November 28, 1884, he said :—

> " I have been overwhelmed with addresses since I left Simla and the task of replying to them has been in many ways difficult..........I do not think that I have said anything calculated to give offence to any one. But I could not honestly speak well of the principles or proceedings of my unscrupulous opponents of last year, or of the lamentable weakness which marked the conduct of the Civil Service as a body."

During his stay in Bombay, Lord Ripon performed the ceremony of laying the foundation stone of the present municipal building opposite the Victoria Terminus station. Pherozeshah who was then the President of the Bombay Municipal Corporation, in an appropriate speech invited him to perform the ceremony. In doing so he said :—

> "My Lord, we do not ask you to perform this ceremony for the purpose of securing the *eclat* of an imposing ceremonial. We ask you because, in this city which claims with pardonable pride to be the favoured abode of free municipal institutions, we hail you as the apostle who, with keen and marvellous appreciation, has done more than any other to extend and

develop the true principles of local self-government. We ask you because it is the earnest desire of this Corporation—a desire in which every rate-payer and citizen of this city, from the highest to the lowest, eagerly and cordially joins—that we may thus secure the association of the name of a statesman who has 'known the season when to take occasion by the hand,' and has assiduously and carefully planted where your illustrious predecessor, the Earl of Mayo, had prepared the soil and dug and delved, and where your eminent successor has promised, to use his own picturesque language, to watch and water, aye, to prune and trim. And lastly, My Lord, we ask you because, as we will frankly admit, we have desired to retain for our Hall some connexion, however slight and remote, with the enduring fame which will occupy one of the most glorious pages in the history of British rule in India, nay, in the history of the world. My Lord, we are deeply sensible of the honour you have done us in acceding to our wishes, and I now beg you to proceed to perform the ceremony. In asking you to perform the ceremony, I have no doubt that this city gives a practical pledge that the building raised on this fair spot will be one worthy of this great city and the affection it bears to you."

At the Town Hall, addresses from many towns in the presidency were presented to Lord Ripon. On the platform behind Lord Ripon, there rose a regular mountain of silver caskets, carved boxes, volumes of parchments, rolls of signatures and illustrative addresses on silks and satins. In pursuance of a resolution passed at a public meeting of the citizens of Bombay, a Memorial Fund was raised and the same was given over ultimately for the benefit of the Victoria Jubilee Technical Institute. Various other funds were also donated to the Institute which is under the control of a Managing Board. I am on that Board representing the Ripon Memorial Committee.

On his departure, right from Parel where the Government House was in those days, to the Apollo Bunder, the whole town was beflagged and decorated and a solid mass of humanity lined the streets all the way from Parel to Apollo Bunder. In what is called the Moti Bazar near Mumbadevi, the merchants had hung garlands of pearls and diamonds. Ripon's carriage was stopped at the Bhuleshwar and Mumbadevi temples and the Brahmin priests blessed him and applied *kumkum* and rice to his forehead. They presented silver trays to him with cocoanuts placed in them. I was present at the Apollo Bunder when he sailed and I saw him walking contented and pleased as any human being would be who was the recipient of such heartfelt gratitude from the millions inhabiting this country. His private secretary, Mr. Primrose, was walking proudly beside him with the silver tray and cocoanuts.

THE INDIAN NATIONAL CONGRESS

Although there were in each Presidency political associations like the Bombay Presidency Association in Bombay, the Sarvajanik Sabha in Poona, the Indian Association in Calcutta and the Mahajana Sabha in Madras, there was no central organisation for the co-ordination and expression of the opinion of the country as a whole. The events during Lord Ripon's regime already narrated emphasised the necessity of such an organization. It fell to the lot of an Englishman to bring it into existence.

The Indian National Congress owes its birth to a Scotsman, Allan Octavian Hume, who was for many years a member of the Indian Civil Service. Born in 1829, he entered the I.C.S. in 1849 and was posted to Bengal. After serving in various capacities, he was Secretary to the Government of India from 1870 to 1879. In 1879, he was sent back to the districts because it was said he was inconveniently outspoken and expressed his



views with great freedom without regard to what might be the wishes and intentions of his superiors. Lord Lytton offered him the Lt.-Governorship of the Punjab but he declined the appointment on the ground that a Lieutenant-Governorship meant a great deal of entertainment and neither his wife nor himself cared for this. Lord Lytton then recommended him for the post of the Home Member but the recommendation was turned down by Lord Salisbury on the ground that Hume had stiffened Lord Northbrook against the repeal of the cotton duties.

During his whole official career, Hume had formed strong views in favour of an early attainment of self-government by India. He retired from the Civil Service in 1882 and began evolving a definite scheme for creating united public opinion in India and giving it effective expression. Lord Dufferin, the Viceroy, encouraged Mr. Hume by telling him that as head of the Government, he found the greatest difficulty in ascertaining the real wishes of the people of India and that for purposes of administration, it would be a public benefit if there existed some responsible organisation through which the Government might be kept informed regarding the best Indian public opinion.

On March 1, 1883, Hume took the first step by issuing a circular letter to the graduates of the Calcutta University in which he said .—

> "Constituting, as you do, a large body of the most highly educated Indians, you should, in the natural order of things, constitute also the most important source of all mental, moral, social, and political progress in India. Whether in the individual or the nation, all vital progress must spring from within, and it is to you, her most cultured and enlightened minds, her most favoured sons that your country must look for the initiative. In vain many aliens like myself, love India and her children, as well as the most loving of

these; in vain may they, for her and their good, give time and trouble, money and thought; in vain may they struggle and sacrifice; they may assist with advice and suggestions; they may place their experience, abilities and knowledge at the disposal of the workers, but they lack the essential of nationality, and the real work must ever be done by the people of the country themselves."

He proposed that a commencement should be made with a body of 50 founders to be a mustard seed of future growth. He added: "If only 50 men good and true can be found to join as 'founders,' the thing can be established and the further development would be comparatively easy." This appeal made by one who was trusted and beloved by the Indian people did not fall on deaf ears. The men required as founders to initiate the movement came forward from all parts of India and the first meeting of 'Indian National Union' which was subsequently renamed 'Indian National Congress' was arranged to be held in Poona in December 1885. Owing to certain difficulties, the venue was changed to Bombay.

On December 27, a day before the Congress actually met, many distinguished persons in Bombay including Justice Jardine, Sir William Wedderburn and Principal Wordsworth met delegates informally to express their sympathy with the work on which they were about to enter. The first plenary session was held on December 28, in the hall of the Goculdas Tejpal Sanskrit College. On that day, 72 good men and the foremost among Indian intellectuals, sat down together to plan the future of their country. Mr. W. C. Bonnerjee, a leading Barrister of Calcutta who was also Standing Counsel for Government at the time, was elected President. Among the delegates were Dadabhai Naoroji, Pherozeshah Mehta, K. T. Telang, Dinshaw Wacha and Jhaverilal Yajnik from Bombay. It was truly a national gathering comprising leading people from all parts of India, from the extreme north to the ex-

treme south, and including all communities. I was then a law student and was among those who attended the gathering as a visitor on the opening day.

At the second Congress which was held in Calcutta, Lord Dufferin showed his sympathy by inviting the members of the Congress as "distinguished visitors" to a Garden Party at Government House, and a similar compliment was extended by Lord Connemara, the Governor of Madras in the following year. In subsequent years, however, a change came over the attitude of the authorities towards the Congress and Congress leaders. After the Madras session in 1887, an aggressive propaganda among the masses was started. Mr. Hume published a pamphlet entitled "An Old Man's Hope" in which he made an impassioned appeal to the people of England in the following terms:—

> "Ah men! well fed and happy! Do you at all realize the dull misery of these countless myriads? From their births to their deaths, how many rays of sunshine think you chequer their 'gloom-shrouded paths'? Toil, toil, toil; hunger, hunger, hunger, sickness, suffering, sorrow; these, alas, alas, are the key-notes of their short and sad existence."

Mr. Hume also made arrangements in England for agitation in the press regarding India and also interested a band of Members of Parliament to take interest in Indian affairs. All this was unpalatable to the bureaucracy in India. On April 30, 1888, Hume made a vigorous speech at a great meeting in Allahabad where he advocated a bold propaganda addressed to the masses on the model of the Anti-Corn League in England. This created a flutter among the officials and some of them desired to suppress the Congress and even advocated the deportation of Hume.

In October 1888, Sir A. Colvin, then Lt.-Governor of the North Western Provinces wrote a long letter extending over 20 printed pages to Hume warning him against the danger of the course he was pursuing. Mr. Hume's re-

joinder was of 60 pages combating the views of Colvin. The Congress session was to be held at Allahabad in December of that year. The local officials, both civil and military, being very unsympathetic, it became almost impossible to secure a suitable site for holding the Congress session. A dramatic coup, however, solved the difficulty. "Lowther Castle" with extensive grounds which was at one time used as Government House was in the market for sale for some time. The then Maharajadhiraj of Darbhanga, Sir Luchmeshwar Singh, who was an ardent patriot and a supporter of the Congress, purchased the property and placed it at the disposal of the Reception Committee for holding the Congress Session.

The curious fact about the Maharaja was that he many times planned to attend the Congress session but never attended any. The reason, it was said, was that he was a great believer in astrology and on every occasion that he intended to be present at the Congress session, the astrologer somehow declared that the stars were not propitious and so he had to give up the idea of attending. At the Allahabad session, Andrew Yule, a European commercial magnate of Calcutta presided.

The next session was held in Bombay in December 1889. It was a memorable session as Charles Bradlaugh attended it. This was the first session of the Congress that I attended and I was a member of the Reception Committee. A huge pandal was erected on the open grounds of "Sans Soucie" at Byculla where the Masina Hospital is now housed. There were nearly 10,000 people including delegates and visitors accommodated in the pandal. A vivid picture of that scene rises before my eyes whenever I think of it. Sir William Wedderburn presided and the great Congress leaders of those days were on the platform along with Charles Bradlaugh who had come out to India for a change after his serious illness. When the Reception Committee was formed, Telang was elected its Chairman but soon afterwards on the death of Justice Nanabhai

Haridas, he accepted the vacant Judgeship and Pherozeshah Mehta took his place. Bradlaugh, tall and commanding, in reply to numerous addresses spoke with a loud and clear voice which was heard not only in every corner of the pandal but by the larger audience on the road outside and on the Byculla Bridge. "For whom should I work if not for the people? Born of the people, trusted by the people, I will die for the people," he said.

Pandit Ajodhyanath, father of Pandit Hirdaynath Kunzru, with his long venerable beard, spoke with a resounding voice. Mr. G. K. Gokhale made his first appearance on the Congress platform on that occasion. On his return to England, Bradlaugh introduced a Bill in the House of Commons for the expansion of the Legislative Councils, the extension of their powers and the introduction of the elective system. This activated the usually lethargic India Office and Lord Cross, the Secretary of State introduced a very modest measure under which a few members of the Legislative Council were to be nominated on the recommendation of certain civic bodies and members were given the right to put interpellations and to discuss the budget but were given no power of voting on it.

In June 1893, Dadabhai Naoroji was elected a member of the House of Commons and soon afterwards he succeeded in inducing the House of Commons to adopt a resolution in favour of holding simultaneous examinations in England and India for the Indian Civil Service. He was elected President of the Congress session to be held in Lahore. He arrived in Bombay on December 2, 1893 and his homecoming was the occasion of great celebrations. The reception that he got was unequalled in the annals of Bombay except perhaps the ovation that Lord Ripon got on his departure. The whole city was *en fete* and the route from the Bunder to his residence in Khetwadi was bedecked with flags and banners. Lord Harris, the Governor, congratulated him and the two members of Council, Mr. H. M.

Birdwood and Mr. A. C. Trevor and the Chief Justice Sir Charles Sargent called on him.

On the evening of his arrival, he came to the chamber of Pherozeshah Mehta where I and other friends met him and had talks, with him. During his stay in Bombay, he often turned up in the evening at this rendezvous. On December 18, at the Town Hall, numerous addresses were presented to him from various towns in the Presidency. The Bombay Municipal Corporation also presented an address. His travel from Bombay to Lahore to preside over the National Congress session was a triumphal procession. The citizens of various places on the way presented addresses. At Amritsar, at the Sikh Golden Temple, the Sikhs invested him with a robe of honour according to the Sikh rites. At this Congress, Dadabhai read out a message to him from the Irish Members of Parliament to the following effect: "Don't forget to tell your colleagues at the Congress that every one of Ireland's Home Rule Members in Parliament is at your back in the cause of the Indian people."

In 1894, the Congress was held in Madras and was presided over by Alfred Webb, an Irish Member of Parliament. In 1895, the Congress session was held in Poona and Surendranath Bannerji presided. In delivering his address he exhibited his marvellous memory. His address was ready printed and copies were distributed among the delegates. Bannerji delivered the whole address without looking at the print almost word for word. He spoke for about two hours. In 1901, Wacha presided at Calcutta. In October 1904, I had gone to Ceylon with some friends and at a meeting of Indians held in Colombo, a handsome sum was subscribed for the ensuing Congress at Bombay and was handed over to me. Sir William Wedderburn presided at that session and a new feature was added in the form of an Industrial Exhibition which was put up on the Oval.

In 1905, Gokhale presided over the Congress held at Benares. This notable session witnessed the first manifestation of the new spirit evoked by the recently started Swadeshi movement by way of protest against the partition of Bengal by Lord Curzon.

In 1906 the Congress session was held at Calcutta. Dadabhai Naoroji was elected to preside over the session for the third time. The President, Pherozeshah, myself, Jinnah, Dinsha Wacha and Rustom K. R. Cama were the guests of the Maharaja of Darbhanga at his Chowringhee House. This session was as largely attended as the Bombay session of 1889. At this session, Dadabhai Naoroji unfurled the flag of "Swaraj" for India. Bengal was at that time very much agitated over the partition of the province effected by Lord Curzon and a movement for boycotting British goods had been inaugurated.

The Congress passed the following resolution :—

> "Resolved that having regard to the fact that the people of this country have little or no voice in its administration, and that their representations to the Government do not receive due consideration, this Congress is of opinion that the Boycott Movement inaugurated in Bengal, by way of protest against the partition of that Province was, and is, legitimate."

The 1907 session was to be held at Nagpur but the extreme section of the Congress headed by Tilak created such an atmosphere at Nagpur that the Reception Committee found it impossible to hold the session there with any chance of success. The venue was accordingly changed to Surat. Tilak though he was present at the meeting of the All-India Congress Committee where this was decided upon and did not object, started a campaign against the change. In order to excite feelings, rumours were circulated that the Surat Congress was going to drop some of the resolutions passed at Calcutta. Attempts were also made to put forward for the presidental chair other names in opposition to

Dr. Rash Behari Ghose who had been selected by the Reception Committee. When the Congress met on December 27, the atmosphere was surcharged and there were all sorts of rumours afloat. After the Chairman of the Reception Committee made his speech, the election of Dr. Rash Behari Ghose as President was moved by Dewan Bahadur Ambalal Sakharlal. When Surendranath Banerji rose to second the proposition, attempts were made to shout him down from various parts of the audience and pandemonium reigned in the pandal. The meeting was therefore adjourned till the next day.

At 1 P.M. on the following day, the Congress met and Mr. Banerji resumed his speech and was heard in silence. Pandit Motilal Nehru supported the motion and the chairman put it to vote. The motion was declared carried as an overwhelming majority shouted their assent. When Dr. Ghose rose to deliver his address, Tilak who had previously sent a note to the chairman of the Reception Committee that he wished to address the delegates on the proposal for the election of the President and to move an adjournment, ascended the platform and standing in front of the President, demanded to be heard; he refused to submit to the ruling of the Chair that he could not speak at that stage. While this was taking place on the platform, the rank and file of the extremists repeated their performance of the previous day and there were clashes among the audience. Several people tried to persuade Tilak to obey the chair but to no avail. Tilak just stood with folded arms and declined to go to his seat unless bodily removed. Some people from Poona and Nagpur with *lathis* in their hands made a rush for the platform. A Deccani shoe was hurled from the audience and touching Surendranath Banerji, struck Pherozeshah. Pandemonium ensued, chairs were thrown at the dais and sticks were freely used.

I was on the platform alongside Pherozeshah. Mr. Nevinson the well-known English journalist who was pre-

sent on the platform described the scene as follows :—

> "Suddenly something flew through the air. A shoe! a Mahratta shoe! reddish leather, pointed toe, sole studded with lead. It struck Surendranath Banerji on the cheek; it cannoned off upon Sir Pherozeshah Mehta. It flew, it fell, and at a given signal, white waves of turbaned men surged up the escarpment on the platform. Leaping, climbing, hissing the breath of fury, brandishing long sticks, they came, striking at any head that looked to them moderate, and in another moment, between brown legs standing upon the green-baize table, I caught the glimpses of the Indian National Congress dissolving in chaos."

The Session had to be suspended.

In the evening of that day a large number of leading delegates met at the bungalow where Pherozeshah, Wacha, myself and Nevinson were staying. It was then resolved to hold the next day a convention of all delegates to the Congress who were agreed that the attainment by India of self-government similar to the self-governing Dominions was to be the goal and that this was to be attained by strictly constitutional means. A manifesto was accordingly issued signed by leading Congressmen. The Convention was held on December 28, in the Congress Pandal and admission was by tickets. It was resolved at this meeting to revive the Congress in accordance with the articles of declaration already signed by the delegates and a committee was appointed to draft a constitution. This committee met in Allahabad in April 1908 and the creed of the Congress then settled was to be subscribed to unconditionally by every delegate. By the new constitution, delegates to the Congress were to be elected only by Congress committees and associations affiliated to the Congress and not by other bodies or public meetings. The result was that the extremist party was excluded from the Congress, and Tilak and his followers remained outside till 1915 when a compromise was effected.

After the happenings at Surat, the extreme section felt that they had committed a tactical blunder and made many attempts to patch up matters and come back to the Congress. Pherozeshah however, in his wisdom, discouraged all these attempts though he was pressed by many of his friends to come to a compromise. To an appeal made to him by an esteemed friend, he unequivocally replied in the negative observing : "I cannot help saying that there is a great deal of mawkish sentimentality in the passionate appeals for unity at all costs."

The Congress under the new constitution was held in Madras under the Presidentship of Dr. Rash Behari Ghose. The Morley-Minto Reforms had by that time been announced and were well received. These reforms for the first time introduced separate communal constituencies for election to the legislatures. They provided also for the appointment of one Indian in each of the provincial governments and the Central Government. The 25th session of the Congress was held at Allahabad under the presidentship of Sir William Wedderburn at which the following resolution moved by Mr. M. A. Jinnah, seconded by Mr. Mazrul Haque and supported by Mr. Hassan Imam was passed :

> "While recognising the necessity of providing for a fair and adequate representation in the Legislative Councils for the Mahomedan and other Communities where they are in a minority, this Congress disapproves the Regulations promulgated last year to carry out this object by means of separate electorates, and in particular, urges upon the Government the justice and expediency of modifying the Regulations framed under the Indian Councils Act of 1909, before another election comes on, so as to remove anomalous distinctions between different sections of His Majesty's subjects in the matter of the franchise and the qualifications of the candidates and the arbitrary disqualifications and restrictions for candidates seeking election to the Councils.

The Congress also urges a modification of Regulations, where necessary, relating to the composition of non-official majorities in the Provincial Councils, so as to render them effective for practical purposes."

At this Congress, Sir William Wedderburn and the Aga Khan arranged that representatives of Hindu and Muslim communities should meet to adjust certain matters with a view to complete agreement between the two communities. The *Pioneer* remarked about this move: "Why do these people want to unite the two communities, if it is not to unite them against the Government?"

In the closing months of 1914 Lord Willingdon, the then Governor of Bombay had requested Gokhale to prepare a scheme of post-war reforms. Gokhale, however, did not want to do anything on his own responsibility but wanted time to consult Pherozeshah Mehta and the Aga Khan and the Governor consented. Gokhale requested these two gentlemen to go to Poona to consult him as his health was failing but unfortunately the proposed meeting could not be arranged. In the meantime, Willingdon had written to Gokhale reminding him of his request and so Gokhale prepared a draft in pencil in his own hand and sent one copy to Willingdon and the other two copies to Pherozeshah and the Aga Khan. Gokhale died in February 1915 and Pherozeshah died in November 1915. Gokhale's draft scheme did not see the light of day till August 1917, just about the time of Montagu's declaration. The Aga Khan published it in England and Mr. Sastri, Gokhale's successor, published it in India. This scheme came to be popularly known as Gokhale's Political Testament.

In 1915, the Congress was held in Bombay. Pherozeshah Mehta was appointed chairman of the Reception Committee and the Committee asked Sinha who had by then relinquished the Law Membership of the Government of India, to preside over the session. Sinha was unwilling at the beginning but at Pherozeshah's insistence, he ultimate-

ly agreed. Unfortunately, however, before the Congress session could be held, Pherozeshah passed away on November 5, 1915, and in the pandal that was erected for holding the Congress session, a pubilc meeting presided over by Lord Willingdon, the then Governor of Bombay, was held to mourn the loss that the country had sustained by the death of Pherozeshah. Lord Hardinge in his message to the public meeting spoke of Pherozeshah as "a great Parsi, a great citizen, a great patriot and a great Indian whom India could ill-afford to lose." The Congress met in December 1915. Dinsha Wacha as Chairman of the Reception Committee welcomed the delegates. I then moved the election of Sinha as President. Sinha in his speech suggested that the ultimate goal of British policy in India should be announced with authority and secondly that after the announcement was made, some definite steps should be taken towards the goal. It appears that this gave inspiration to Lord Chelmsford who soon after assumption of office told his Executive Council at its very first meeting that the basis of any constitutional reforms should be a declaration of policy as a prelude to the taking of the first steps in its fulfilment. He then pressed the Secretary of State for India for such a declaration and ultimately a declaration was made in August 1917. Lord Chelmsford disclosed all this in London in October 1926 at a banquet which I gave in honour of the birthday of Jamsaheb Ranjitsinghji.

At this Congress, attempts were made from various quarters to make such changes in the constitution as would enable those who had kept out of the Congress after the Surat incident to come back. In the end a resolution was passed altering the first article of the constitution. The necessary changes in the constitution having been made, Tilak and his followers publicly announced their willingness to re-enter the Congress. At this Congress session, a resolution was adopted authorising the A. I. C. C. to confer with the executive of the Muslim League and frame a scheme for self-government. An interesting feature of

this Congress was that Mr. Gandhi who had then returned from South Africa was not elected to the Subjects Committee and he had to be nominated by the President under the powers vested in him by the constitution.

THE MUSLIM LEAGUE SESSION

In December 1915, Mr. Jinnah, President of the All-India Muslim League, arranged to hold the Muslim League session in Bombay where the Congress session was to be held. Certain persons set to work to prevent the holding of the session of the League in Bombay on the plea that the League would thereby be playing into the hands of the Congress. These people were encouraged by the then Commissioner of Police, Mr. Edwardes. Every effort was made to prevent the League session being held in the City. Mr. Jinnah was, however, adamant and proceeded to make the necessary arrangements for holding the session. He saw the Governor (Willingdon) and complained about the activities of the Police Commissioner.

The intrigue to prevent the League session being held in Bombay, however, went on. Ultimately, a meeting was held at Government House at which Lord Willingdon was present and certain conditions were agreed to whereby the oppositionists undertook that they would cease to oppose the holding of the session in Bombay and would not interfere with it. A Press Note embodying the arrangement was issued by Government and published in the *Bombay Government Gazette.*

In spite of this settlement, the oppositionists came to the meeting, created a disturbance and broke up the meeting. I was present on the platform as a visitor at the time. Subsequent meetings of the League were held behind closed doors at the Taj Mahal Hotel. On the motion of Mr. Jinnah a resolution was adopted appointing a committee to formulate a scheme of reforms and authorising that committee to

confer with other political organizations. Mr. Jinnah emphasised that when a scheme was approved by the Muslim League and the Congress, the same should be presented to the British Government in the name of United India. Among the supporters of the resolution was Maulana Abul Kalam Azad (present Congress President) who was then a member of the League.

Tilak started his Home Rule League in April 1916 some six months before Mrs. Besant started hers and carried on a raging propaganda in favour of the Congress movement all over Maharashtra. A purse of one lakh of rupees was presented to him by the public to carry on this propaganda. Mr. Hatch, the District Magistrate of Poona, issued a notice to Mr. Tilak to show cause why he should not be bound over in a sum of Rs. 20,000 in his own recognition and in two sureties of Rs. 10,000 each, to be of good behaviour. The Magistrate made the rule absolute. On application to the High Court a bench consisting of Justices Batchelor and Shah set aside this order. Mr. Jinnah appeared for Tilak in the High Court proceedings. The action of the District Magistrate only served to enchance Tilak's prestige and popularity. By this time, the scheme of post-war reforms prepared by the A.I.C.C. in conjunction with the Muslim League executive was ready and it was placed before the public.

MONTAGU-CHELMSFORD REFORMS

In July 1916, Mr. Montagu speaking on the Mesopotamia debate in the House of Commons made a severe attack on the system of administration obtaining in India. He described the system as "too wooden, too iron, too inelastic, too antediluvian, to be of any use for the modern purposes we have in view," and concluded by saying: "Unless you are prepared to remodel in the light of modern experience, this century-old and cumbrous machine, then I believe, I

verily believe, that you will lose your right to control the destinies of the Indian Empire."

The Government of India, it was reported at that time, had sent some reform proposals to the Home Government which were of a reactionary character. In October 1916, nineteen elected members of the Imperial Legislative Council prepared a memorandum with regard to post-war reforms in the constitution of India and forwarded the same to the Viceroy for submission to the British Government. In the preparation of that memorandum, Jinnah, Malaviya, Sastri and myself took an active part but I did not sign the memorandum as it was decided that the signatories should be only elected members of the Imperial Legislative Council. At that time I was a nominated member.

Lord Chelmsford in his speech before the Imperial Legislative Council characterised these proposals as "catastrophic changes." It was the destiny of Lord Chelmsford later on to be a party to the Montagu-Chelmsford report which contained proposals much more drastic than those which he on this occasion called catastrophic.

Mrs. Besant also got busy and started her Home Rule League in Madras with branches all over the presidency and with the help of two newspapers, *New India* and the *Commonwealth* carried on an intensive campaign in support of the constitutional reforms. The Government of Bombay and the Government of the Central Provinces served externment orders on her. The Madras Government got panicky and ordered that Rs. 20,000 should be deposited by her in connection with the publication of the two newspapers. This amount was subsequently forfeited.

CONGRESS-LEAGUE SCHEME

In December 1916, the Congress as well as the All-India Muslim League met separately in Lucknow and a joint scheme of reforms was adopted by the Congress as well as by the League. In this scheme, Congress for the first time

officially assented to the system of separate electorates for Muslims. It was at that time believed by the leaders of both organisations that separate electorates would be merely a temporary phase and that within ten years, joint electorates would be established. This proved to be a mistaken faith. At this Congress which was a united Congress, Mr. Ambika Charan Muzumdar, the veteran Bengal leader presided. He welcomed the Governor of the Province, Sir James Meston, who was present by special invitation. Sir James replied in suitable terms wishing well to the Congress.

After the close of the Congress session, both Mrs. Besant and Tilak toured the country and explained the implications of the Congress-League scheme at largely attended public meetings. The Government of Madras in order to put a stop to this propaganda interned Mrs. Besant and her two associates at Ooty. Public feeling grew acute and there was great agitation all over India. Many prominent leaders of public opinion like Pandit Motilal Nehru, Mr. Chintamani, Ramaswamy Iyer and others joined the Home Rule League and the situation grew very tense. Mr. Montagu in his Diary narrates a story and draws a lesson : " I particularly like the Shiva who cut his wife into 52 pieces only to discover that he had 52 wives," and he adds : "This is really what happened to the Government of India when it interned Mrs. Besant." There was a move to start a Passive Resistance Movement to get Mrs. Besant released but in the meantime Chamberlain resigned and Montagu succeeded him at the early age of 36. He had toured India extensively in 1912 and was Under-Secretary of State for India for nearly four years and had thus first-hand knowledge of Indian political conditions. Soon after his assumption of office, Montagu studied the situation and prevailed upon the British Government to make a public declaration of British policy towards India and on August 20, 1917, he made the following announcement in the House of Commons :

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the cooperation received from those upon whom new opportunities of service will thus be conferred and the extent to which it is found that confidence can be reposed in their sense of responsibility.

"Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament."

In order to create a calm and favourable atmosphere for his proposed visit to India, he directed the Government of India to release Mrs. Besant and other political leaders

in September 1917. In the cold weather of 1917, Mr. Montagu toured India.

MONTAGU'S VISIT TO INDIA

After the declaration of August 1917 in the House of Commons, Mr. Montagu, the Secretary of State for India came out to India in November of the same year, and he and Lord Chelmsford went round to important places in the country and received various deputations from public bodies and interviewed many individuals regarding the various proposals about constitutional reforms. The Congress and the Muslim League put forward a joint scheme before them. It is noteworthy that the scheme had no element of responsibility. The same was the case with the proposals of many of the public bodies and men who appeared before them. Mr. Montagu, however, was very keen and insistent upon introducing the element of responsibility. I was one of the deputation on behalf of the Bombay Presidency Association that interviewed Mr. Montagu and Lord Chelmsford on December 27, 1917.

I individually saw them again and in Mr. Montagu's Indian Diary, posthumously published by Mrs. Montagu the following entry appears :—

> "There followed Mr. Setalvad, the Vice-Chancellor of the Bombay University, an extremely clever lawyer and a very nice fellow who argued extraordinarily well. We put before him the whole of our scheme and he has gone away to think over it, I think favourably."

On January 2, 1918, myself, Chandavarkar and Ibrahim Rahimtoola were asked to see Montagu and Willingdon. Montagu explained to us his revised scheme. The Diary contains the following entry about this interview :

> "I got up early in accordance, with pre-arrangement and went down to Willingdon's room where I explained the latest scheme to Setalvad, Chandavarkar

and Rahimtoola. To my astonishment, they all liked it. I cannot see that it is so very different from the old scheme."

During the time that Mr. Montagu was in this country, the A.I.C.C. decided upon sending a deputation to Mr. Montagu and Lord Chelmsford in support of the Congress-League scheme and a special committee of twelve members with Chintamani as secretary was appointed to prepare an address and a memorandum. The Congress deputation waited on Montagu and Chelmsford in November 1917.

By this time, Mrs. Besant had become very popular and she was elected President of the Congress which was to meet at Calcutta in December 1917. Both Montagu and Chelmsford did not receive Mrs. Besant although she was the President-elect of the Congresss. Montagu in his Diary makes an interesting note about her release in the following terms :

> " Chelmsford tells me that he thinks he will have to take action about Mrs. Besant's speech, and promised to tell me what he is going to do when he has made up his mind. Perhaps it is as well that I should not know. I had thought of writing her, regretting the strength of some of her language, but I fear it will be no good. There will, of course, be an outburst again of anger at her release, and jeers that my visit has not produced a calm atmosphere and that she has violated her pledges."

When the Congress met at Calcutta, the Montagu-Chelmsford Report had not been published. Therefore, it could not do anything except generally to support India's claim to self-government.

The report was published in June 1918 and met with a varied reception. Mrs. Besant said that it was " unworthy of England to offer and of India to accept."

SPLIT IN HOME RULE LEAGUE

In June 1918 a meeting of the citizens of Bombay was held in the Town Hall under the presidency of Lord Willingdon, the then Governor of Bombay in connection with the war effort. Tilak who wanted to give conditional support to the war was not allowed to speak and as a result, he together with his friends walked out of the meeting. Some time thereafter, a meeting was to be held regarding the South African question presided over by Lord Willingdon and invitations were sent to four persons representing the Bombay Home Rule League, viz., Jinnah, Jayakar, Bhulabhai Desai and Horniman, to speak on the occasion. At a meeting of the Committee of the Home Rule League, it was decided that as a protest against the action of Lord Willingdon in not allowing Tilak to speak at the previous meeting none of the Home Rule League leaders should attend the meeting. As a result of this, Bhulabhai Desai resigned his membership of the League and attended the meeting and took part in it.

CONGRESS DISAPPROVES

A special Congress session was held in Bombay in August under the presidency of Hasan Imam of Bihar at which most of the senior members of the Congress absented themselves in view of the hostile attitude regarding the reforms of the extremist party that had captured the Congress. Mr. Sastri with one or two others attended the session. The Congress reaffirmed the principles of reforms contained in the Congress-League Scheme and declared that nothing less than self-government within the Empire would satisfy the legitimate aspirations of the Indian people. The resolution appreciated the earnest attempt on the part of the Viceroy and the Secretary of State to inaugurate a system of responsible government and while it recognised that some of the proposals constituted an advance in some directions, it was of opinion that they were "disappointing and unsatisfactory" and went on to suggest modifications which

were considered necessary and desirable in the country's interests. Those leaders of the Congress who were in disagreement with the course of action that the Congress was taking formed a separate organisation which was styled the National Liberal Federation of India of which the first session was held in Bombay in November 1918. The next ordinary session of the Congress was held at Delhi in December of the same year and the Congress re-affirmed the Bombay resolution on reforms.

SOUTHBOROUGH COMMITTEES—FRANCHISE AND FUNCTIONS

After the Joint Report of Montagu and Lord Chelmsford was published in June 1918, in order to give effect to the recommendations made in the said report for constitutional reforms in India, the Secretary of State appointed two Committees: (1) to recommend what subjects should be transferred to the control of the Governor acting with his ministers and what subjects should be reserved to be administered by the Governor and the Executive Council and (2) to recommend the franchise to be adopted for elections to the provincial and central Legislatures. The first committee which was popularly known as the Functions Committee consisted of Mr. Richard Feetham, a Judge in South Africa as Chairman, Mr. M. H. Couchman, a Madras Civilian, Sir Rahim Baksh, Chief Minister of Bhawalpur State, Dr. Tej Bahadur Sapru; Mr. H. S. Stephenson, a Bengal Civilian, Mr. J. P. Thompson, Chief Secretary to the Government of the Punjab, and myself. The second Committee which was called the Franchise Committee consisted of Lord Southborough as Chairman and the following members: Sir Frank Sly, Sahibzada Aftab Ahmed Khan, Mr. W. M. Hailey, Surendra Nath Banerjee, Mr. Malcolm Hogg and Mr. Srinivasa Sastri.

Lord Southborough, was, however, in general charge of both the committees. While each committee sat separately to deal with matters referred to them, on various

occasions joint sessions of the two Committees were held, Lord Southborough presiding. The committees first met at Simla on November 8, 1918 where preliminary discussions were held. The Committees then visited Delhi, Patna, Lucknow, Lahore and Calcutta before the Christmas holidays and examined official and non-official witnesses. After Christmas, we reassembled at Calcutta on January 2, 1919 and heard Bengal evidence. From Calcutta, we moved to Madras and thence to Bombay returning to Delhi on February 30. At Delhi, some further evidence was taken and the committees met from day to day to consider their conclusions and their reports were signed on February 26, 1920. The report of the Functions Committee was unanimous but I and Tej Bahadur Sapru recorded that Land Revenue administration and with it Irrigation should be made transferred subjects in Bombay in view of the exceptional conditions surrounding the subject in that province. Sir Rahim Baksh supported our recommendation in this behalf but he wanted no such transfer in Sind. The report of the Franchise Committee was also unanimous. While on tour, the Committee held sittings on 68 days in all and they sat as a rule between 6 to 7 hours a day. We travelled in all about 9,000 miles.

In examining the case of each province we received the help of two additional members appointed by the respective local Governments.

The Government of Madras declined to put forward any scheme for the division of provincial subjects into two parts, reserved and transferred, and said that such a scheme could appropriately be framed by those who believed dyarchy to be both practicable and desirable. On representation being made to the Government of India by Lord Southborough, that Government instructed the Government of Madras to prepare the necessary lists. In forwarding such lists to Lord Southborough, the Governor-in-Council of Madras made it clear that the fact of his framing the lists

in deference to the orders of the Government of India, must not be taken to indicate that he had in any way withdrawn or receded from the objections he had to the whole scheme of dyarchy. The Madras Government being in this frame of mind, they included in the list of subjects to be transferred only some unimportant departments.

I remember that one high official of the Madras Government in his evidence before us maintained that the Abkari department should not be transferred. On my asking him his reasons for that view, he said that the Indian Ministers would not be drinking country liquor and that, therefore, they could not properly administer the Abkari Department. I then asked him whether the then Abkari Commissioner and the Member of the Executive Council in charge of the Abkari Department who were European civilians were drinking country liquor. He answered me in the negative and then I put to him that if those officers who were then in charge of the Abkari Department and who did not drink country liquor, could properly administer that department, why could not Indian Ministers not drinking country liquor do the same ? He had no answer to give.

Similarly Sir R. N. Mukerji the head of Martin & Company, Calcutta said that the Medical Department should not be transferred because he said that the Indian Minister would not treat the European I.M.S. Officers fairly. I asked him whether he had a number of European employees in his firm and he admitted he had. I then put to him that if he was presumably treating his European employees fairly, why did he fear that the Minister would not do the same. He gave no reply.

The Government of Bombay had submitted to the Government of India an alternative scheme of constitutional reforms which involved no division of the executive government and said that they were unable to accept the proposed scheme of government as one which was likely to

work satisfactorily in practice. One member of the Council, Sir Ibrahim Rahimtoola, however, did not agree with that view. I may say this, however, that when the Committee met the Government of Bombay, Sir George Lloyd who had only recently assumed office as Governor, told us that whatever recommendations the Committee decided to make, they should be of such a character as would reasonably satisfy public sentiment in India.

The Punjab Government were also in favour of an alternative scheme avoiding division of functions. In the Central Provinces, Mr. Slocock, the Chief Secretary, maintained that Law and Order should be transferred because Indian lawyers had proved themselves capable and therefore, Indians would administer Law and Order very well.

The four months we spent on these committees passed very pleasantly. We all worked together as a happy family and there was no jarring note. Lord Southborough was a very capable and tactful President. We were very comfortable all through. Our travelling was done in a special train placed at our disposal by Government and we were hospitably treated everywhere.

During our stay in Calcutta, I had put up with Mr. J. N. Roy, Secretary to the Government of Bengal, a man of exceptional ability. He stood first in the I.C.S. examination but was rejected on medical grounds. He appeared again the next year and again stood first and was again rejected. Lord Curzon who was then the Governor-General took up his cause and got orders passed that Mr. Roy should be taken in the Civil Service and given all grade promotions exactly in the same manner as he would have got if he had been selected by the Civil Service Commissioners.

While the Committee was at Madras, came the news that Sinha had been made a Lord and was appointed Under-Secretary of State for India. Mr. Roy wrote to me,

enthusiastically welcoming the appointment and said as follows with regard to the reception the appointment got from Civil Service circles :

> "In our Secretariat, there is great gnashing of teeth and tearing of hair. One says what title will Sinha take, another replies Baron Sinha of Dharumtoola (Dharumtoola is a quarter in Calcutta where the poor Eurasians live). Funny how these English people lack imagination and fail to see what a good effect this appointment will create in India."

After the reports of the two committees were presented, a bill embodying the recommendations of Montagu-Chelmsford report and the recommendations of the Southborough committee was presented to Parliament. The Government of India had raised various objections to the proposals contained in the Montagu-Chelmsford report as well as the recommendations of the Southborough committees. The Bill was read a second time and was referred to a select committee of both Houses, with Lord Selbourne as Chairman.

Lord Southborough in his letter of March 6, 1919, wrote to me as follows :—

> "The Bill was read a second time without a division and the general sense of the House of Commons was clearly in its favour. The majority of the press is also on our side. All this heartens up the Government and that is very important. They have not much courage and very little unanimity. However, many preliminaries involving serious troubles have been overcome and we go into the Joint Committee of both Houses with a fair run for our money. How this bill will emerge from that ordeal I cannot say but unless the Committee is mismanaged or the Indian 'Extremists' and the anti-reform Extremists together manage to get hold of it, I do not anticipate anything very bad. We must be patient and see.

The Government of India sent home some vile despatches on our report, the Franchise particularly. They were simply wantonly mischievous and designed to break up the concordat we arrived at in committee. Nothing too strong can be said about them. They lack even the one quality which you might expect to find, knowledge of the subject. *Divide et impera* is the only policy—to delay the 'Bill' a dominating hope."

The Bill with some modifications became the Government of India Act of 1919 and dyarchy was set up in the Provinces, and the legislatures in the Provinces and the Centre were formed with a majority of elected members.

THE HUNTER COMMITTEE

DISTURBANCES IN THE PUNJAB, DELHI AND AHMEDABAD, IN MARCH AND APRIL 1919. MARTIAL LAW ADMINISTRATION IN THE PUNJAB.

CAUSES AND NATURE OF THE DISTURBANCES

In order to appreciate the real causes and nature of the disturbances of March and April 1919, it is necessary to recall the antecedent background. India had heartily co-operated with Britain in the war against Germany. For four years and more, the resources of India like those of the other members of the British Commonwealth had been freely used. A large effective army had been supplied, the Punjab itself making a substantial contribution of 400,000. Mr. Gandhi had supported the war effort and had assisted in the recruiting campaign. India had raised three war loans and made a free gift of a hundred million pounds to the Empire's War expenses. Besides these direct contributions in men and money, there were indirect contributions of a substantial character in various ways.

The British Government had as early as August 1917 made a declaration of policy by which the attainment by

India of responsible government by successive stages was announced as the goal. The Montagu-Chelmsford report on constitutional reforms had been published in 1918 and this recommended the introduction of dyarchy in the provinces and the transfer of various departments to ministers chosen from elected members of the legislatures. The legislatures both in the provinces and at the centre were to have majority of elected members. The Southborough Committees which were constituted to make recommendations regarding subjects to be transferred to popular control and for franchise had nearly finished its work and parliamentary legislation to give effect to these reforms was expected to follow. Under these circumstances, great expectations were raised in India regarding the advent of a substantial measure of responsible self-government.

ROWLATT BILLS AND CIVIL DISOBEDIENCE

On February 6, 1918, the Criminal Law Amendment Bills, popularly known as the Rowlatt Bills were introduced in the Imperial Legislative Council. The opposition to those Bills was widespread throughout India among people of all shades of political opinion. It was felt that on the eve of the grant of a measure of self-government for India and after the splendid contribution made by her in the winning of the European War, the introduction of such repressive measures conferring large arbitrary powers on the executive uncontrolled by the judiciary, was wholly uncalled for and undeserved. Surendranath Bannerjee moved a postponement of the consideration of one Bill that had been introduced at the September session and that motion was supported by almost all Indian members elected as well as nominated and belonging to all communities.

I myself was at Delhi at the time and I spoke about this to the late Sir George Lowndes, who was then the Law Member and tried to impress upon him the undesirability of rushing through the Bill when the Defence of India Act, then still in operation, gave Government all the necessary

powers. I believe that the Honourale Mr. Srinivasa Sastri also tried his best to persuade Government to postpone the Bill. But all this was in vain.

On February 24, 1919, Gandhi at Ahmedabad started the satyagraha campaign. He devised a vow in the following terms to be signed by those who agreed to join the Civil Disobedience movement :—

> "Being conscientiously of opinion that the Bills known as the Indian Criminal Law (Amendment) Bill No. 1 of 1919 and the Criminal Law (Emergency Powers) Bill No. 2 of 1919 are unjust, subversive of the principles of liberty and justice and destructive of the elementary rights of individuals on which the safety of the community as a whole and the State itself is based, we solemnly affirm that in the event of these Bills becoming law, and until they are withdrawn, we shall refuse civilly to obey these laws and such other laws, as a Committee to be hereafter appointed may think fit, and we further affirm that in this struggle we will faithfully follow truth and refrain from violence to life, person or property."

On March 1, 1919, a meeting of the signatories to the satyagraha pledge was held at Bombay under the presidency of Gandhi to form a Sabha and appoint an Executive Committee. The following day, Mr. Gandhi issued a manifesto inaugurating satyagraha and civil disobedience to laws.

On March 7, Gandhi attended a meeting at Delhi to protest against the Rowlatt Bills. An All-India *hartal* was proclaimed for March 30. The first outbreak of violence occurred at Delhi on March 30, 1919. Mr. Gandhi left Bombay on April 8, to go to Delhi and the Punjab. On April 9, under orders of the Government of India, Gandhi was arrested at Pulwal and escorted back to Bombay where he was set at liberty but he was told that he

would not be allowed to leave the presidency. Following this, serious and violent disturbances of peace occurred at Delhi, Lahore, Amritsar and various places in the Punjab and at Ahmedabad.

On hearing of these disturbances, Gandhi declared the suspension of his movement and issued handbills inviting the public and the mill-hands of Ahmedabad to return to work. In a manifesto issued on April 18, he said: "I am sorry that when I embarked on a mass movement, I underrated the forces of evil and I must now pause and consider how best to meet the situation." Further he said: "We have found by bitter experience that while in an atmosphere of lawlessness, civil disobedience found ready acceptance, *satya* (truth) and *ahimsa* (non-violence) from which alone civil disobedience can worthily spring had commanded little or no respect." It was most unfortunate that Government enacted the Criminal Law (Amendment) Act in spite of the determined opposition of the Indian public. The passing of that law led to the starting of the satyagraha movement and to the serious disorders that took place and the promulgation of Martial Law in the Punjab.

The excesses of the martial law administration that came to light inflamed public feeling and directly led to the boycott of the new constitution by Mr. Gandhi and the Congress. It is evident that if these events had not happened, the Congress would have joined in working the constitution of 1919. It must be remembered that in 1919, there was no cleavage as at present between Hindu and Muslim interests. Many prominent Muslims including Mr. Jinnah were in the Congress. The Congress was then actively supporting the Khilafat movement. Under these circumstances, if the Congress had joined in working the new reforms side by side with the Muslims, the political history of India would have been entirely different from what we find it today.

MARTIAL LAW IN THE PUNJAB

On February 13, 1919, Sir Michael O'Dwyer, the Lt. Governor of the Punjab, requested the Governor-General-in-Council to take action under Regulation 10 of 1804, Article 2 of which empowers the Governor-General-in-Council to suspend wholly or partially the functions of the ordinary criminal courts in British territory and to establish Martial Law therein "for any period of time while the British Government in India is engaged in war with any native or other power as well as during the existence of open rebellion against the authority of Government in any part of the territory aforesaid." The parts referred to included the Punjab.

The Governor-General-in-Council took action as recommended and Martial Law was established at different dates in Lahore, and other places in the Punjab between 15th and 20th April. Martial Law was withdrawn in some parts of the Punjab on May 28, 1919. It was also withdrawn at Amritsar on June 7 and on June 11 at Lahore. Martial Law was still continued on the railways in the Punjab and it was withdrawn from there finally on August 25, 1919.

After the promulgation of Martial Law, the Governor-General-in-Council acting under the emergency powers vested in him under Section 72 of the Government of India Act 1915, issued various Martial Law Ordinances and various commissions were set up for trial of cases. Many persons were arrested and put up for trial before these tribunals. Some of the accused people desired to engage counsel from other provinces to defend them but permission for such counsel to enter the Punjab was refused by the military authorities. Eardley Norton, the well-known Barrister of Madras, was refused such permission. Lala Harkishanlal, a prominent Lahore businessman engaged me to defend him and I was also refused permission to enter the Punjab. I wrote about this to Lowndes who was then the Law Member of the Government of India, but he replied

saying that the Government of India were unable to interfere with the discretion of the military authorities in the Punjab. Information regarding what was happening in the Punjab under the Martial Law administration was very strictly censored but news filtered through about the oppressive nature of the various measures taken under the Martial Law regime and there was considerable clamour in the country for a full and public inquiry into what had happened.

THE HUNTER COMMITTEE

On October 14, 1919, the Government of India in the Home Department issued a resolution to the effect that the Governor-General-in-Council with the approval of the Secretary of State had decided to appoint a Committee to investigate the recent distrubances in Bombay, Delhi and Punjab, their causes, and the measures taken to cope with them. The enquiries were to be conducted in public but any part of the proceedings could be conducted in camera if the President considered such a course desirable in public interests. The Committee was to consist of the following members :—

The Hon'ble Lord Hunter, earlier Solicitor-General in Scotland and then Senator of the College of Justice in Scotland, President.

The Hon'ble Mr. Justice Rankin, Judge of the Calcutta High Court.

The Hon'ble Mr. W. F. Rice, Add. Secretary to the Government of India, Home Department.

Major-General Sir George Barrow, Commanding the Peshawar Dn.

The Hon'ble Pandit Jagat Narain, Member of the Legislative Council of the Lt. Governor of U.P.

The Hon'ble Mr. Thomas Smith, Member of the Legislative Council of the Lt. Governor of U.P.

Sardar Sahebzada Sultan Ahmed Khan, Member for Appeals, Gwalior State.

and myself.

Before the appointment of the Committee, I was asked if I would serve and I had consented. When I accepted the membership, I did not expect to receive any remuneration for my working as a member.

Some time afterwards, however, I received a letter from the Government of India saying that I would be paid Rs. 3,000 a month while working on the committee. I wrote back saying that if there was to be any remuneration at all, it should not be anything less than the salary of a High Court Judge and they agreed to give me Rs. 4,000. The committee was to assemble at Delhi by the end of October.

There was considerable speculation as to why Sultan Ahmed Khan who was in the service of an Indian State was put on the Committee and why no prominent Muslim from British India was selected. When we assembled at Delhi, I and Pandit Jagat Narain who were old friends talked about this. I met Sultan Ahmed whom I found to be a very genial person. I frankly put to him whether in doing his work on the Committee, he would feel embarrassed by reason of his being in the service of an Indian State under the political control of the Government of India. Sultan Ahmed at once reassured me and said that he would act impartially and according to his conscience decide on the materials placed before the Committee.

The Committee held its first sitting at Delhi on October 29. The evidence of witnesses in Delhi occupied eight days. The Committee heard evidence for 29 days at Lahore, six days at Ahmedabad and three days in Bombay. On the conclusion of the enquiry, the Committee adjourned to Agra to draft the report.

At Delhi, the All-India Congress Committee appeared by counsel and the late C. R. Das cross-examined witnesses produced by the authorities and called witnesses on behalf of the Congress Committee. At Ahmedabad, there was a similar appearance on behalf of the Gujarat Sabha.

In connection with the enquiry at Lahore, a communication was received on November 12, 1919 from the President of the All-India Congress Committee forwarding a copy of the resolution passed by that body that "in view of the situation created by the refusal of the Government to accede to the request for the temporary release on adequate security of the principal Punjab leaders at present undergoing imprisonment, the Committee regrets that it finds it impossible to co-operate with the Disorders Enquiry Committee by appearing before it and tendering evidence on behalf of the people". It was further suggested in the letter that the impasse could only be removed if the Hunter Committee could see its way to recommend the release for the period of the enquiry of the principal leaders. It appeared from the copy of a letter from the Private Secretary to the Lt.-Governor of the Punjab which had been annexed to the said letter of the Congress Committee, that an assurance had been conveyed to the Congress Committee that proper facilities would be given for consultation between persons in custody and counsel engaged in the enquiry. Lord Hunter had also suggested to the Punjab Government that the fullest reasonable facilities should be given in the matter. Under the circumstances, the Hunter Committee were not in a position to take any further action.

While the Committee was sitting at Lahore, Mr. Gandhi had come there and I happened to meet him by accident at the house of a friend. I then tried to impress upon him the desirability of the Congress Committee availing themselves of the opportunity offered by the Punjab Government for access to persons in jail and appearing before the Committee but he was not agreeable to do this.

The evidence of the official witnesses themselves, however, revealed the great excesses that had been perpetrated without any justification under the Martial Law Administration. Foremost among the excesses was the firing at Jallianwalla Bag at Amritsar by General Dyer.

JALLIANWALA BAG FIRING

On the morning of April 14, General Dyer issued a proclamation saying: "No procession of any kind is permitted to parade the streets in the city or any part of the city or outside it at any time. Any such processions or gatherings of four men will be looked upon as an unlawful assembly and will be dispersed by force of arms if necessary." The proclamation was promulgated by General Dyer himself by beat of drums and copies of the Urdu translation of the proclamation were also distributed in some parts of the town. The number of people who could have heard the proclamation was put down by the authorities as 8 to 10 thousand people. The normal population of the city, it was admitted, was between 160,000 and 170,000. In addition there was a large influx of people from outside owing to the Baishakhi fair and there was also a cattle fair. The Deputy Superintendent of Police who accompanied General Dyer having remarked that it was getting too hot to walk in the city any longer, they did not go further.

When General Dyer heard that a meeting was going to be held at Jallianwalla Bag, at 4-30 p.m. he made up his mind, as he admitted in his evidence, that he would go there and immediately open fire and that he would "do all men to death till they were going to continue the meeting." He further admitted that his idea was to produce a moral effect. In his own words "my idea from the military point of view was to make a wide impression."

According to General Dyer he wanted to create a "wide impression" and "a great moral effect". There is no doubt he did succeed in creating a wide impression and a great moral effect but of a character quite opposite to the one he intended.

He further said in his evidence that he took armoured cars with him and would have opened fire with machine guns but the entrance to the place was too small for the

armoured cars to enter. Before commencing to fire, no warning was given to the crowd to disperse. Although people began to run away and some lay down on the ground, General Dyer admitted that he continued firing on them till his munitions were almost exhausted. In this firing about 400 people were killed and about 1,200 were wounded. Mr. Thompson, the Chief Secretary, admitted that 379 deaths took place and that there was possibly still a small margin for error.

After the firing had taken place, no action was taken for the relief of the wounded. General Dyer said in his evidence "It was not my job". Even permission for the cremation or burial of the dead was not given till April 16 and 17.

General Beynon and Sir Michael O'Dwyer approved of the action of General Dyer. The entry in the war diary of the 16th Division under date of April 14, ran as follows:—

> "At a Conference at Government House, General Dyer's Report on the action at Amritsar was considered and action taken was approved by the Lt.-Governor."

CRAWLING ORDER

On April 19, General Dyer promulgated an order popularly styled the "crawling order". This order was passed with reference to a street where one Miss Sherwood had been brutally attacked on April 10 by a mob. The street was narrow and of considerable length and had abutting on it on both sides houses of different dimensions. The order was to the effect that no Indians should be allowed to pass through this street but if they wanted to pass they must move on all fours and pickets were placed at certain points from 6 a.m. to 8 p.m. to enforce obedience to these orders. After giving the order, Gen. Dyer proceeded further and ordered eleven "insolent" inhabitants as he called them, to be handed over to the police to be brought to him at 9 the next morning. These people had to pass

through this street and were made to crawl between the two pickets. Sir M. O'Dwyer, when he heard of the crawling order, strongly disapproved of it and telephoned to General Dyer to withdraw it.

HUMILIATING AND CRUEL ORDERS AND SENTENCES

In Gujranwalla and some other districts, orders were passed requiring Indians going in conveyances to alight from them on seeing a European Officer on the road and *salaam* him. When two students of 14 years of age failed to *salaam* at Lyalpur and gave wrong names and addresses, a notice under Martial Law was issued that all students over 14 years of age of various schools and colleges should parade in front of the Government office and salute the Union Jack at 8 every morning until the two offenders were given up. At Kasur, one school master represented that his boys had gone out of hand. Thereupon, the military authorities ordered that certain boys should be picked out to suffer punishment vicariously for the whole lot and the headmaster was asked to select six boys and send them. When they were sent, they appeared to the authorities to be miserable looking. It was, thereupon ordered that all the boys of the school should be paraded at the Station and the six biggest boys were to be selected and were to be given 6 stripes each. The military officer concerned said in his evidence, "I said generally speaking, take the six biggest, the misfortune was that they happened to be big".

Armoured trains and aeroplanes were used and people in various villages were fired at. Under the Martial Law, whipping from 5 to 30 stripes was inflicted on 258 persons in Lahore and other places. Dr. Kedarnath, an old retired Assistant Surgeon, occupying a good position in Amritsar was arrested and handcuffed and kept in custody for about a month without ever being brought to trial. Dr. Manoharlal, a Barrister-at-Law of standing (now the Finance Member in the Punjab Ministry) was also arrested apparently because he was one of the Trustees of the *Tribune*.

He was arrested and handcuffed and kept in the Lahore jail for about a month. He was then released without being brought to trial. Mr. Gurudayal Singh, a Barrister of Amritsar who at considerable risk to himself had done his best to prevent the crowd from getting unruly at the railway footbridge at Amritsar, was also arrested but was ultimately discharged. In all 789 persons were arrested and were never brought to trial. The Martial Law Commission inflicted punishment of death on 108 persons out of which ultimately only 23 were maintained, and the remaining were commuted, some to transportation and the rest to sentences of imprisonment for short terms. 265 persons were sentenced to transportation. Only two of these sentences were maintained, five were commuted altogether and the rest were reduced to imprisonment for varying terms of years.

In Lahore civil area, Col. Johnson issued numerous notices and orders controlling the daily life of the people. For the purpose of promulgating these orders, he required every ward in the city to keep at least four representatives from 8 a. m. to 5 p.m. at the Waterworks Station to learn what orders if any were issued. He ordered that all motor cars be surrendered for military service except in cases where he issued exemption certificates. Such exemption certificates were not given to Indians. He further took motor cars from Indians and gave them to Europeans. His reason for doing so in his own words was: "I wanted to teach them a lesson." Col. Johnson ordered certain notices to be pasted on certain properties selected for the purpose and made the owners of those properties liable to severe punishment if any such notices affixed on their properties were defaced by any one. He asked the Criminal Investigation Department to submit a list of the houses on the walls of which these notices were to be pasted and Col. Johnson, in his own words, selected the houses of those who were not "notoriously loyal." Col. Johnson was quite proud of his action and he said: "I will do it again. It was one of

the few brain-waves I had." It appears that one of these notices was stuck on the compound wall of the Sanatan Dharma College. It was subsequently torn by somebody and thereupon Col. Johnson ordered that every male person found in the precincts of the compound of the college should be arrested; 65 students and all the professors of the college were arrested and taken to the Fort three miles away and interned there for about 30 hours. He ordered the students of various Colleges to attend a roll call four times a day for nearly three weeks. 1,000 students were thus made to walk 16 miles a day in the heat of May for many days.

REPORT OF THE HUNTER COMMITTEE

After the conclusion of the enquiry, the Committee assembled at Agra to draft their report. We were staying at the Government Guest House at that place. After many discussions amongst ourselves, it became apparent that there was a definite cleavage of opinion between the European members on the one hand and the Indian Members on the other as to (1) the justification of the application of Martial Law in the first instance and (2) its continuance for the period it was continued. It appeared to the Indian Members that both the Government of the Punjab and the Government of India had taken an exaggerated and panicky view of the disturbances and had wrongly persuaded themselves to believe that the disturbances showed the existence of an open rebellion against the authority of the British Government and justified the application of the Bengal Regulation 10 of 1804. They were of the view that the authorities in Delhi and Bombay had taken a more correct and sober view of the situation. The disturbances in Ahmedabad and other places in the Bombay Presidency and in Delhi were more or less of the same grave character as those in the Punjab. In Delhi, the difficult situation was handled with tact and restraint by the Commissioner, Barron. Similarly in dealing with a sudden and grave outburst of mob fury in Ahmedabad, the Collector, Chatfield,

acted with discretion and discernment. The Bombay Government while firmly taking adequte steps for the maintenance of peace and order in the city of Bombay and other places, wisely avoided taking measures likely to cause public irritation and to leave bitterness behind.

On the question of the continuance of the Martial Law administration in May, when the disturbances had all subsided within a few days of their outbreak, the view of the Indian members was that there was no justification for such continuance. Sir Michael O'Dwyer and the Punjab authorities had tried to justify the continuance of the Martial Law administration on grounds altogether alien to those necessary under the Regulation of 1804.

As regards the condemnation of the Jallianwala firing, the crawling order and other oppressive measures under the Martial Law administration, the European and Indian Members were agreed except that the Indian Members took a much graver view than the one taken by the European Members which was somewhat halting and apologetic. The discussions which were on occasions heated led to some unpleasantness, particularly because of the intolerant attitude adopted by Lord Hunter towards any difference of opinion. During one of the discussions I had with Lord Hunter, he lost his temper and said " You people (meaning myself and my Indian colleagues) want to drive the British out of the country." This naturally annoyed me very much and I said: "It is perfectly legitimate for Indians to wish to be free of foreign rule and Indian independence can be accomplished by mutual understanding and goodwill. The driving out process will only become necessary if the British are represented in this country by people as short-sighted and intolerant as yourself." After this, though under the same roof, we, the Indian members, ceased to talk to Lord Hunter.

Lord Hunter drafted the report to which the European members agreed, and we the Indian members wrote our

own report. It was very arduous work for me as my two Indian colleagues, after discussion amongst us and agreement as to the conclusions, put the whole burden of drafting the report on me. The tension under the unpleasant atmosphere was too great and on the day we signed the report, I fell ill with high fever. Col. O'Maira, an Irishman who was the Civil Surgeon there took me to the Thompson Hospital where I recovered slowly after over a fortnight.

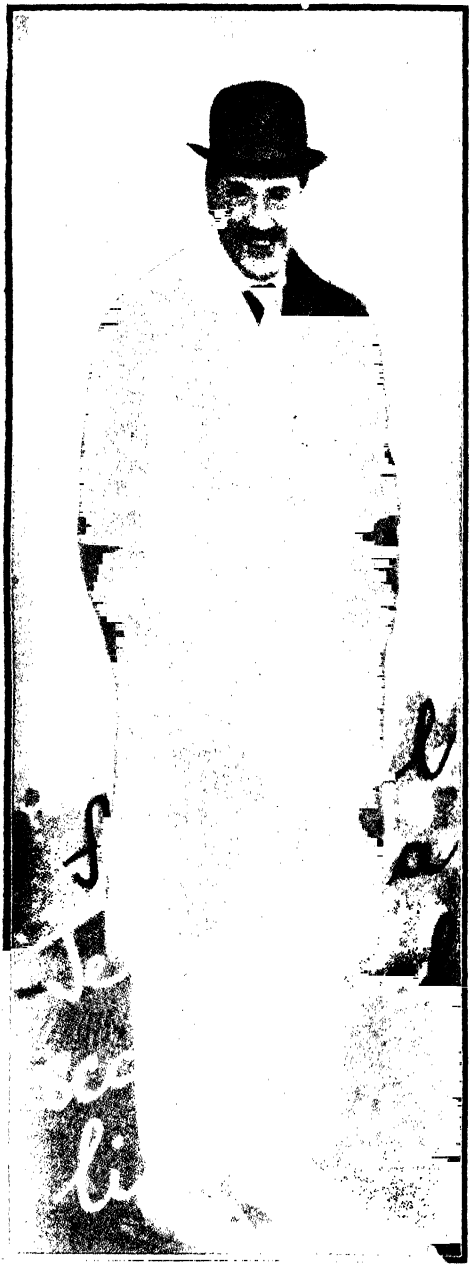
DEBATE IN PARLIAMENT

After the report was submitted to the Government of India, that Government recorded its conclusions and the matter went to the Secretary of State and the British Cabinet. General Dyer was ultimately asked to resign and I believe he was given half pension . There was a debate on the subject in the House of Commons on the vote on the budget when Sir Edward Carson moved a cut by way of censure of Government. Montagu and Winston Churchill strongly condemned the objectionable features of the Martial Law administration. Churchill condemned the action of General Dyer in scathing terms and called it "frightfulness." He said : "Frightfulness is not a remedy known to the British Pharmacoepia." The cut motion was negatived by 247 to 37 votes.

In the House of Lords, the matter was debated on a motion of censure by Lord Finlay against Government on July 19, 1920, for the orders passed regarding General Dyer. In the course of his speech Lord Finlay accused the Indian Members of the Hunter Committee of partisanship. Lord Sinha who was then the Under Secretary of State for India replied as follows:—

> "I desire to submit to your Lordships with all the emphasis I can that this is a most monstrous and most undeserved charge. Remember who these three gentlemen, the Indian members of the Committee were. Sir Chimanlal Setalvad who was a distinguished Advocate of the Bombay High Court for many years; and the

Letter from the Rt. Hon'ble V. S. Srinivasa Sastri being one of those received from many Indian friends.



Vice-Chancellor of the University there, and is at the present moment—after the report of the Hunter Committee—Judge of the Bombay High Court: a man who has ben famous throughout his public life for moderation of thought and speech. Another Indian member of the Committee was Sultan Ahmed, a Minister to the State of Gwalior, a Graduate of Cambridge, a Barrister of England, who has never taken any part in British-Indian politics, whose services and the services of his family, have been acknowledged, amongst others by Sir Michael O'Dwyer himself, and against whom not a breath of suspicion has ever arisen as regards his taking part in political agitation, much less in fomenting disorder. The third Indian member was the Hon'ble Pandit Jagat Narain, Advocate of the Judicial Commissioner's Court of Oudh, who has devoted the best part of his public life to local self-government in that province, and who as a member of the Legislative Council, has earned the confidence and esteem both of the Government and the people of that province."

Lord Curzon on behalf of Government, opposed the motion. The House carried the censure motion by 129 votes to 86.

Subsequently, some people in England raised subscriptions for presenting General Dyer with a purse in appreciation of his services. The vote of the House of Lords and the raising of this fund created great resentment in India.

In those days, I received several annonymous letters abusing me for having condemned General Dyer. One person sent me a cutting from an English paper which had reproduced a photograph of Montagu. Across that cutting he had written in ink: "A typical Jew and scoundrel like you." He had erased the words in the caption "the Hero of the Amritsar Debate" and substituted the words "the Judas in the British Cabinet." In his view both Montagu and myself were scoundrels.

SPECIAL CONGRESS SESSION (1920)

A special session of the Congress was held in Calcutta in September 1920 under the presidency of Lala Lajpat Rai. At that session on the motion of Mr. Gandhi, a comprehensive resolution on non-co-operation, including the boycott of schools and colleges, law courts, councils as well as boycott of foreign goods was adopted in spite of the opposition of Mr. Das and his followers whose delaying amendments were negatived. The President in his closing speech while bowing to the decisions arrived at by the Congress expressed his disapproval of the boycott of schools and colleges, courts and Legislative Councils and styled the boycott of foreign goods as an impractical proposition.

CONGRESS CREED CHANGED

The annual session of the Congress was held at Nagpur in December 1920 under the presidency of C. Vijayaraghavachariar and the Calcutta resolution was confirmed despite the opposition of Das and his friends. At this session, the creed of the Congress which was:

> "The objects of the Indian National Congress are the attainment by the people of India of a system of Government similar to that enjoyed by the self-governing members of the British Empire and a participation by them in the rights and responsibilities of the Empire on equal terms with those members. These objects are to be achieved by constitutional means by bringing about a steady reform of the existing system of administration and by promoting national unity, fostering public spirit and developing and organising the intellectual, moral, economic, and industrial resources of the country."

was changed as follows:

> "The object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means."

Jinnah strongly opposed this change and boldly stood his ground in spite of violent opposition from a large part of the audience. After this Jinnah parted with the Congress.

In May 1921, Gandhi saw Lord Reading at Simla and had two long interviews as a result of which the Ali Brothers who were for a long time in detention were released on their offering an apology. Early in July 1921, the Ali Brothers made violent speeches at the Khilafat Conference held at Karachi and were parties to a resolution declaring it "unlawful for any faithful Muslim to serve from that day in the army or help or acquiesce in their recruitment." They were prosecuted and sentenced.

ARRIVAL OF PRINCE OF WALES AND DISTURBANCE IN BOMBAY

Following the Nagpur resolution, the non-co-operation movement was intensified and was in full swing when the Prince of Wales arrived in Bombay in November 1921. Meetings were being held in various parts of the city and piles of foreign cloth were being daily burnt at various places. On the day the Prince of Wales arrived, clashes occurred between non-co-operators and those citizens who were taking part in the reception of the Prince of Wales.

There were riots at Pydhuni and other places. The fury of the mob was specially directed against the Parsees who were taking part in the welcome of the Prince. Mr. Gandhi was then in Bombay and he went with the late Mr. Soonderdas, solicitor, in a motor car to Pydhuni where the riots were in progress in order to tell the mobs to be non-violent. By the time his car reached the disturbed area and before Mr. Gandhi could preach non-violence to the infuriated crowd, stones began to fall on his motor car and he had to abandon his mission. He then issued in the press the following appeal to the *Mavalis* of Bombay :—

> "Whether you call yourself a Hindu, Mussalman, Parsi, Christian or Jew, you have certainly failed to

consider even your own religious interests. You have used the mass awakening for your own lust for plunder, rapine and even indulging in your worse animal appetite. Some of my friends would, I know, accuse me of ignorance of human nature. If I believe the charge, I would plead guilty and retire from human assemblies and return only after acquiring knowledge of human nature."

Mr. Gandhi went on to state that he had no difficulty in controlling the Indian *Mavalis* of South Africa and concluded by asking the *Mavalis* of Bombay to stop retaliation and give him and his workers a chance to work among them. What unpractical idealism to believe that hooligans would take his advice!

Lord Reading who had come to Bombay to receive the Prince of Wales was very much upset at the happenings in Bombay. That evening I was at Government House and Sir George Lloyd told me how a little while ago, Lord Reading was sitting in the chair that I was occupying, with his head in both his hands, and how he broke down at what had happened. One can well understand the feelings of Lord Reading, if it was true as was said at the time, that he had advocated the coming of the Prince of Wales to India at this juncture in opposition to the contrary opinion of several provincial Governors.

At the annual session of the Congress held at Ahmedabad in December 1921, C. R. Das presided and the Congress rejected the motion for 'Independence' and relaxed the mandatory character of the non-co-operation resolution.

A REPRESENTATIVE CONFERENCE

On January 3, 1922, an invitation for a representative conference was issued over the signatures of Pandit Malaviya, M. A. Jinnah, Purshottamdas Thakurdas, Jayakar and others in order to bring about a setlement between the Government and non-co-operators. The conference was

held on January 14-15, 1922 at the Sir Cowasji Jehangir Hall under the presidency of Sir Sankaran Nair. The conveners were prompted to call the conference because of the sentiments expressed by the Viceroy in Calcutta on December 21, 1921 and his proposal to convene a Round Table Conference at Calcutta.

By its main resolution, the conference supported the proposal for a Round Table Conference of Government and popular representatives and recommended that in order to provide a favourable atmosphere for the dispassionate consideration of the points of controversy, all repressive measures should be suspended and further that, pending the results of the said Conference, all *hartals*, pickets and civil disobedience should cease. Mr. Gandhi in his speech, insisted that before the conference suggested by the Viceroy can be held, it was essential for a proper atmosphere being created and that Government should first redress various wrongs which he catagorically enumerated. Ultimately, the meeting was asked to vote on the principles underlying the resolution moved and not its actual form or wording. The resolution was carried unanimously.

Immediately after the close of the conference, Jinnah and Jayakar as secretaries of the conference put themselves in communication with the Viceroy.

GANDHI DEBUNKS CONFERENCE

While this was going on, Mr. Gandhi sent from Bardoli on February 1, 1922 an ultimatum to the Viceroy telling him that only if the Viceroy complied with the demands made by him within seven days, he would advise postponement of civil disobedience of an aggressive character and released the letter to the press. On the publication of that letter, Mr. Jinnah and Jayakar issued a statement regretting that Mr. Gandhi should have taken this step when consultations were still going on between them and the Viceroy on the question of the Round Table Conference.

CHAURI CHAURA

On February 4, 1922, at Chauri Chaura, an infuriated mob attacked the police chowky and burnt alive 21 policemen. This gave such a rude shock to Gandhi that at a meeting of the Working Committee on February 12, he suspended mass civil disobedience forthwith and instructed his followers to abandon any preparation of an offensive character. The A.I.C.C. confirmed the Bardoli decision but sanctioned individual civil disobedience, whether defensive or aggressive to be commenced by permission of the Provincial Congress Committees.

Mr. Gandhi wrote some articles in *Young India* which the Government of India considered seditious and they ordered his prosecution. He was arrested on March 10. He was tried beore the Sessions Court at Ahmedabad, Mr. Broomfield being the Judge. Mr. Gandhi pleaded guilty and accepted full responsibility for the occurrences in Bombay and Chauri Chaura. He ended by saying "I knew I was playing with fire. I ran the risk and if I were set free, I would still do the same." The Court sentenced him to six years' imprisonment.

On March 23, Montagu resigned in consequence of the premature publication in India of the contents of certain documents relating to the revision of the Treaty of Sevres with Turkey. As soon as Montagu resigned, the bureaucratic attitude in India underwent a change and the reforms were not worked thereafter in the same spirit in which they had been worked while Montagu was Secretary of State.

While Mr. Gandhi was in jail, the Swaraj Party was started by Pandit Motilal Nehru and C. R. Das and they decided to contest the elections to the Councils. Fresh elections were held at the end of 1923 and a strong contingent of Congress members was elected to the various provincial legislatures as well as the Central Legislative Assembly.

LAW MEMBERSHIP

OFFER AND ITS REFUSAL

WHEN the Hunter Committee was in Bombay (where Sir Michael O'Dwyer was examined). I received a letter from the Private Secretary to Sir George Lloyd, the Governor, enquiring whether I would accept the post of an additional Judge of the High Court for one year and the letter further said that later on when a vacancy occurred I would be made permanent. I had no intention of accepting a permanent High Court Judgeship. At a tea-party at the Willingdon Club to which I had invited friends to meet the members of the Hunter Committee, I spoke to Sir Norman MacLeod, the then Chief Justice and told him that I was inclined to accept the additional judgeship for one year only but that I would finally make up my mind later.

Soon after the Committee assembled at Agra to consider its report, Lowndes, the Law Member of the Government of India, asked me and some others including Tej Bahadur Sapru to meet him at Delhi as he wanted to consult us with regard to some income-tax legislation. We met at Delhi in Lowndes's room at the Secretariat in old Delhi. After the work for which we had been called was finished and as we were departing, Lowndes asked me to stay on as he wanted to speak to me. He asked me whether I would accept the Law Membership of the Government of India in succession to himself if it was offered to me. I then told him about the offer of Additional Judgeship at Bombay that I had received. He replied that I might accept the Judgeship for the moment and then take up the Law Membership as that would not be before January, and I expressed my willingness to do so. He then enquired of me who I thought should be considered for the membership of the Executive Council at Bombay and I suggested to him the name of Mr. Samarth.

I then accepted the Additional Judgeship. Subsequently came the sharp cleavage of opinion between the European and Indian members of the Hunter Committee which has already been described. While I was lying ill in hospital at Agra, I received an intimation from Sir Norman MacLeod, the then Chief Justice of Bombay that I was expected to join in March. As I was ill, I telegraphed to Sir Norman that I would join in June on the re-opening of the Court after the summer vacation. On my return to Bombay, I went to Mahabaleshwar and there I saw Lloyd. I informed him of what had taken place between me and Lowndes. He was then apprehensive that if I became a Judge of the High Court, a possible objection might be raised later on to my being appointed Law Member of the Viceroy's Executive Council, on the principle that judicial officers should not be transferred to executive posts. He, therefore, considered it advisable to guard against this possible difficulty as he was most anxious that Bombay which had been unrepresented in the Governor-General's Executive Council should not lose this opportunity. Accordingly, he cabled to Montagu, the Secretary of State for India, stating the facts and enquiring whether any such objection would be taken. Montagu informed Lloyd that no such objection would be raised. Lloyd and myself both then thought that it was desirable that MacLeod, the Chief Justice, should be informed of the possibility of my leaving the Judgeship in the middle of my one year's appointment as he must have counted upon my holding office as a Judge for full one year at least. MacLeod was then in England for the summer vacation. He returned to Bombay on the Friday preceding the Monday on which the Courts were to re-open in June. I immediately saw him and stated to him all the circumstances. He said he would be content if I sat as a Judge for the monsoon term and he would have no objection to my going as a member of the Viceroy's Executive Council.

I accordingly joined the High Court on its re-opening. Later Lloyd took occasion to write to the Viceroy telling him about what had happened between me and Lowndes and pressing that Bombay should be represented at Delhi and that I should be appointed. By this time, the differing reports of the two sections of the Hunter Committee, the Government of India's despatch on them and the orders of His Majesty's Government thereon had been published and the discussion in Parliament had taken place. To the enquiry made by Lloyd, to his utter surprise, came a practical repudiation of what had occurred between me and Sir George Lowndes. It was said that it was merely a casual conversation and no definite intention of offering me the the Law-membership had been expressed. I was not surprised at this change of attitude as the report of the Indian Members of the Hunter Committee holding that there was no justification for the imposition of Martial Law under the Bengal Regulation of 1804 and its continuance, was a serious reflection on the action of the Government of India. Lord Sinha, who was then the Under-Secretary of State for India and had just been appointed Governor of Behar, said in his letter of August 26, 1920, acknowledging my congratulations to him :

> "I need not say I did my best that you should be translated to Simla and so did Montagu. But I am afraid your friend Lowndes was too strong for us."

In another letter Sinha said that the Secretary of State could not impose a colleague on an unwilling Viceroy.

Mr. Bhupendra Nath Basu in his letter to the late Sir Dinshaw Wacha dated September 9, 1920, wrote as follows :—

> "I was having a talk with Mr. Montagu about our friend Setalvad. He entirely agrees with me about the interpretation that will be put on his being overlooked by the Government of India."

I then decided early in October to stand for election to the Central Legislative Assembly under the new reforms and resigned the judgeship.

MEMBER OF THE BOMBAY GOVERNMENT

On December 6, 1920, a Special Convocation of the Bombay University was held to confer the Hon. degree of LL.D. on Lord Sinha, Chandavarkar and myself. After the Convocation was over, Lord, Sinha took me aside and said that both Montagu and Sir George Lloyd were desirous that I should accept the post of member of the Executive Council in Bombay. He said that though leaving my practice would involve considerable sacrifice on my part, Montagu stressed that the best men in public life in India should shoulder the responsibility of Government.

A few days after this, I was conducting a case at Hyderabad (Deccan) when one evening the Secretary to the Resident came to see me and said that the Resident had received a telegram from Sir George Lloyd to find out from me when I was returning to Bombay as he (Sir George Lloyd) wanted to see me urgently. On my return to Bombay, I saw Sir George Lloyd who enquired whether I would accept the office of the member of the Executive Council. About the same time, I received a communication from Mr. Bhupendra Nath Basu, then member of the Secretary of State's Council, that Mr. Montagu was very desirous that I should accept the membership at Bombay. I accepted the membership but with the reservation that I might not continue in office for the usual period of five years.

I received several messages of good wishes from my friends among which was one from Justice Marten.

Bombay, January 4, 1921.

My dear Setalvad,

I should like to send you my heartiest congratulations on your appointment and my best wishes for your success.

As you know, I am sorry you left the Judicial branch. But fond as I am of the High Court, I recognise the superior claims of the Executive at the present moment. You are eminently fitted to excel there as you have done elsewhere, and we shall all watch your future career with affectionate interest.

India wants men like you. There is a big work in front of you, and a legal training enables one to do what a mere politician sometimes cannot do viz., to see straight, and distinguish the right from the wrong path. Good luck to you.

Yours very sincerely,
A. B. Marten

When in January 1921, I accepted office as Member of the Executive Council of the Governor of Bombay, Sir George Curtis and Sir Ibrahim Rahimtulla, were the existing members and Mr. Hayward and myself were the new members. The three Ministers were Messrs. Chunilal V. Mehta, R. P. Paranjpye and Gulam Hussein Hidayatulla. I was put in charge of General, Legal, Development, Irrigation and Marine Departments.

HANDICAPS AND MISCONCEPTIONS

The new constitution under the Act of 1919 started with a great handicap. The exposure of the happenings under the Martial Law administration in the Punjab had shaken the faith of the people and they were not prepared to believe that the British Government really intended to democratise the constitution. The non-co-operation and civil disobedience movements had been started and the Councils were boycotted by the Congress. The sober and level-headed people who correctly estimated the importance of the advance made by the new constitution and were prepared to work it for all it was worth, were branded as traitors to the country.

At the first elections held under the new Act in November 1920, a very small percentage of the electorate exercised the franchise. Those who got elected to the legislatures laboured under the great disadvantage that they had not behind them solid public opinion and support and the Executive Government on their side took full advantage of this fact on occasions. Further, the peculiar circumstances in which these members came to the legislatures made them very sensitive and anxious to show that they were not only stern critics of Government but were prepared to oppose Government as much as possible. The elected members in Bombay did not fully grasp the situation that they had the control of the administration of the transferred departments through the Ministers who were bound to follow the policy laid down by the majority in the legislatures supporting the ministries. They failed to regard the Ministers as their instruments for carrying on the Executive Government in the transferred departments in accordance with the popular view. They treated the ministers as soon as they accepted office, as people who had left their ranks and had become part and parcel of the Executive Government and as such to be attacked and thwarted. This entire misconception of the constitutional position was well illustrated by the fact that, when it was proposed to constitute an association of the elected members of the Bombay Legislative Council with a view to discuss and determine the policy to be adopted on various questions from time to time, it was promptly decided that the Ministers should not be admitted as members of that Association. It was entirely forgotten that the Ministers could only carry on if the majority of the members had confidence in them and they reflected the views of the majority, and that for that purpose it was essential that Ministers should be in close touch with representatives of the people by whose support alone the Ministers could remain in office.

The situation was further complicated by the fact that instead of the Ministers being left untrammelled in the ad-

ministration of the transferred departments, the Governor's interference being limited only to exceptional occasions, the then Governor of Bombay claimed that the Ministers' function in law was merely to give him advice and that it was open to him not to accept it for any sufficient reason. This misreading of section 52 of the Government of India Act of 1919, combined with the fact that no joint responsibility was recognised and that no meetings of the Governor and all the Ministers to decide questions that might arise were held, placed the Ministers in a very difficult situation. The Bombay Ministers, however, were men of strength and independence, and with the ultimate weapon of resignation in the background, fairly succeeded in giving effect to their own policies.

GOVERNOR LLOYD

Sir George Lloyd, the Governor, had an outstanding personality. He was clear-headed and hard-working. He was, however, an imperialist and inclined to be autocratic. One had always to watch his movements. He was, however, fair and right-minded and if you convinced him that he was wrong, he never hesitated to acknowledge his mistake. Once convinced, he would not allow himself to be led by the opinion of the bureaucratic permanent officials. One could hit hard in argument with him but he did not bear any malice. I got on very well with him and personally he was a good friend to me from 1921 till his death. On one occasion during a discussion, I was so irritated by the view he was advocating that I permitted myself to say "Pardon me, Your Excellency, but you are talking nonsense." He grew red in the face but after a prolonged argument said "You were right. I was talking nonsense." The two outstanding achievements of Sir George Lloyd's administration were the Bombay Back Bay Reclamation Scheme and the Sukkur Barrage.

The tendency of Lloyd to concentrate power in his own hands is illustrated by what happened regarding the mak-

ing of appointments in various departments. The administration in the reserved subjects had under the law to be carried on by the Governor-in-Council and all notifications used to be issued in the name of the Governor-in-Council. Lloyd altered the form of the notification into "the Governor of Bombay is pleased to appoint etc.," and "the Governor of Bombay is pleased to invest" certain officers with certain powers. This was quite contrary to law because under the Criminal Procedure Code, the Magistrates and Judges could be appointed and invested with certain powers by the local Government or the Governor-in-Council and if the notification was not in that form and only said that the Governor had made these appointments or conferred those powers, the judgments and sentences passed by them would be without jurisdiction and could be questioned as illegal. On my pointing out that the procedure was contrary to law, the proper form was adopted.

OFFICE OF VICE-PRESIDENT

Sir George Curtis was the Vice-President of the Executive Council. When he retired in April-May 1921, the office of the Vice-President had to be filled by the Governor and it was expected in the ordinary course that Sir Ibrahim Rahimtoola who was the most senior member of Council would be appointed Vice-President. Sir George Lloyd, however, did not announce any appointment for a considerable time. It was apprehended that as Sir Ibrahim was temporarily going as President of the Indian Fiscal Commission, advantage would be taken of his absence and Sir Maurice Hayward might be appointed Vice-President. I and the Ministers, thought that the question should be brought to a head. I saw the Governor and apprised him of our strong feeling that Ibrahim should be nominated as the Vice-President. Sir George Lloyd with his usual frankness said: "With two Indian members of the Executive Council and three Ministers, you have five Indians in the Cabinet and there are only two Europeans. It is therefore,

desirable that the Vice-President should be an European." I told him that it was a matter of great regret that such racial discrimination was contemplated by him and that supercession of Ibrahim Rahimtoola would be very much resented by his Indian colleagues in the Cabinet and I warned him that it was very likely that in that event, he would find in his hands the resignation of all the Indian members of the Cabinet. Sir George Lloyd was rather taken aback and asked "Do you seriously mean this?" I said "Yes." In parting he said that he would consider the matter again. Several days elapsed and one morning, he spoke to me on the 'phone saying that he had reconsidered the matter of the Vice-Presidentship and that Ibrahim was going to be appointed and after a few days the announcement was made.

COWASJI JEHANGIR

When Ibrahim was deputed to take up the Chairmanship of the Indian Fiscal Commission, Sir Cowasji Jehangir was appointed to act in his place on December 6, 1921 and he so acted until July 26, 1922 when Ibrahim returned. Cowasji Jehangir was in charge of the Revenue Department. I had known Cowasji before as we were both members of the Municipal Corporation. When he acted as a Member of Council we came into closer contact. During April-May 1922, when Government was at Mahableshwar. I stayed with him and Lady Jehangir at Sandhurst Castle Ibrahim retired early in 1923 but the vacancy was not filled up till June 1923. In the month of May 1923, when we were at Mahableshwar, I intimated my intention to resign office in June and the question of filling these two vacancies was being discussed between Lloyd, Hayward, Lawrence and myself. There was general agreement as to one vacancy being filled by the appointment of Cowasji.

As regards the other vacancy, the name of Sir Chunilal V. Mehta who was a Minister at the time was put forward

particularly by Lawrence. My view was that it was wrong on principle to appoint as Executive Councillor a person who was a Minister, because I maintained that in order that Ministers should be perfectly independent, they should not look forward to any other appointment practically in the gift of the Governor. I had no personal objection to Chunilal who was quite competent. Ultimately, my view prevailed with Lloyd and he accepted my suggestion that Bhulabhai Desai should be appointed. Bhulabhai was at that time in England for treatment of his wife who was suffering from a serious illness which was expected to be prolonged. Lloyd communicated with the Secretary of State who sent for Bhulabhai and enquired whether he would accept office. Owing to the trouble he was in at the time on account of the serious illness of his wife, he declined the offer. When that information was received from the Secretary of State, Lloyd favoured the appointment of Chunilal Mehta and his appointment was approved by His Majesty the King.

After Cowasji left government, we have been associated together in the Liberal Party. We have been close personal friends for many years. I highly value his friendship and admire his public spirit in devoting time to the service of the country. Cowasji is a man who has no pride of his position and wealth and is ever ready to help in a good cause. Lady Jehangir is a charming person and is doing very good social work.

LEGAL DEPARTMENT

The member in charge of the Legal Department had among other things to dispose of judicial appeals, civil as well as criminal, from the decisions of the Agency Courts in Kathiawar. The practice followed for many years was that the appellant submitted in writing his appeal embodying all arguments in support of the appeal, to the Court from whose decision he was appealing. The Agency Court supplied a copy of the appeal to the respondent who also sub-

mitted in writing all arguments in support of the decision appealed against. The appeal and the rejoinder were then forwarded to the Government of Bombay and the Legal Member went through the appeal and rejoinder and gave his decision which was then communicated to the lower Court. No hearing was given to either party. It was only once many years ago that Sir Raymond West before disposing of an appeal had given a hearing to the parties. The prevailing system was highly unsatisfactory. The appellant got no opportunity to reply to the respondent's contentions and if any point struck the Legal Member, he had no opportunity of putting the same to the parties. When I as Legal Member was asked to dispose of such appeals, I at once said that I could not dispose of judicial cases without hearing the parties. The Secretariat officials did not like this innovation but I insisted that if I had to dispose of appeals, I could only do so after openly hearing the parties concerned. I used to have a regular board for hearing appeals and parties appeared by counsel. This proved to be very satisfactory to all concerned.

DEVELOPMENT DEPARTMENT

The Development Department was in charge of Sir George Curtis and was given to me when he retired in April 1921. The Development Department dealt with the Back Bay Reclamation Scheme and Suburban Development and Industrial Housing.

The reclamation of the Back Bay was an old idea. It was first undertaken in 1864 by a private company which came to grief as it failed to carry out its ambitious scheme of joining Colaba Point with Malabar Point. The portion that was reclaimed, viz., the land comprising the Chowpatty frontage and Charni Road areas lapsed to Government under the terms of the concession that had been granted to the company. The shares of the company which were quoted at Rs. 25,000 each became worth nothing bringing great financial disaster for Bombay. The Reclamation idea

was revived during the regime of Lord Sydenham in 1911. At that time, a scheme was proposed but it was considered too ambitious. The matter was further considered during the governorship of Lord Willingdon. A Development Committee was appointed in 1915. Based on its report, a scheme was formulated by the Government of Bombay and was sanctioned by the Government of India and the Secretary of State in 1919.

The action of Sir George Lloyd's Government in launching the Back Bay Reclamation Scheme should be judged by the conditions then existing in Bombay. There was a very serious shortage of accommodation both for residential and business purposes. It was impossible to get decent residential accommodation except at prohibitive rents. It was even more difficult to obtain office accommodation for which fabulous rents had to be paid. A premium of as much as a lakh of rupees was paid on the sub-letting of a prominent shop accommodation. Land on Hornby Road was being sold in the vicinity of Rs. 1,000 per square yard and in some instances as much as Rs. 1,200 and Rs. 1,400 were paid. In the case of the Worli Reclamation undertaken by the City Improvement Trust, offers upto Rs. 70 per square yard were rejected as insufficient.

The retaining wall for the Back Bay Reclamation was under construction when I took charge of the Development Department. The scheme was to fill in the area bounded by the retaining wall by material dredged from the harbour and an order had been placed for the construction of a special dredger at a cost of Rs. 90 lakhs. Sir George Buchman had been appointed Consulting Engineer and the lay out and the scheme were prepared under his guidance. The plans for the dredger were also made by him and the construction of the dredger in England was being supervised by him. The plans and estimates for the dredger were made on the basis of expert advice as to the nature of the material which was expected to be found in the har-

bour to be dredged and pumped into the area to be reclaimed.

Some time in 1922, Sir Sassoon David, a leading financier of Bombay of those days, approached Government with a proposal on behalf of a Syndicate to take over from Government the reclamation scheme, the Syndicate paying all the moneys spent by Government till then and undertaking all liabilities incurred includng the price of the dredger and in addition paying a sum of two crores of rupees as profit to Government. On anxious consideration I came to the conclusion not to accept the offer. I had a talk with the Governor about the matter and when I explained to him the grounds in support of my view, he emphatically agreed. My view was this. The Syndicate that was prepared to pay down several crores of rupees and to undertake the expenditure of some further crores of rupees for completing the scheme were doing so for making good profit out of it. They would presumably float a Company and pass on the shares to the public who were expected under the then existing financial boom to take up the whole capital possibly at a premium. If the scheme for some reason or other ultimately failed, there would be a great financial disaster in Bombay similar to, if not greater than the one that followed the failure of the Back Bay Reclamation Company in the sixties of the last century. On the other hand, if Government executed the scheme, even if it failed and Government lost a few crores of rupees on it, it would not break Government with an annual revenue of about 15 crores of rupees at the time. This view has proved to be correct. When later a very pessimistic view about the success of the scheme prevailed one can imagine what would have happened if the undertaking had been taken over by a company.

When I left office in June 1923, a good part of the retaining wall had been constructed quite within the estimates and the dredger had just arrived. When the dredger

was put in action, it was found that the material that came up from the harbour was of quite a different character and nature from the material which it was believed would be found and on the basis of which the dredger had been constructed. The dredging part of the scheme having thus failed, all the calculations went wrong. The filling had to be done by material excavated from the suburbs and brought to the Reclamation area. Under these circumstances, the scheme, it was apparent, was going to cost much more than the original estimate and two other dredgers had to be bought. At the same time, following the end of the war, a severe depression overtook the trade and industries of Bombay and India, and there was a great slump in land values in Bombay.

Both the public and Government became panicky. Some of those who at one time saw big money in the scheme and wanted that the scheme should be handed over to private enterprise were the loudest in condemnation of the scheme. In 1926, a Committee presided over by Sir Grimwood Mears, the then Chief Justice of the Allahabad High Court, was appointed to inquire into the whole subject of the Reclamation Scheme and make recommendations as to what was to be done in regard to it. The Committee after taking evidence in India went to London. I happened to be there at the time and they called me to give evidence before them. In my evidence, I pointed out that the matter must be judged on the facts and circumstances existing when the scheme was undertaken and not by the unexpected events that supervened. I further pointed out that the scheme was not undertaken or attempted to be justified on the basis of anticipated profits. It was considered necessary and desirable to produce the land required to meet the large and growing demand for residential and business accommodation and that the scheme was desirable and justified in the interests of Bombay of 25 or 30 years hence. I ended by saying " Circumstances have so terribly altered that anticipations have been upset but I fully expect a great

expansion and prosperity for Bombay in the future when the Back Bay Reclamation Scheme and those who inaugurated it will receive some recognition and appreciation." My anticipations have been fully justified. A good part of the Reclamation land has been sold at very high prices going up to Rs. 120 per square yard and land values have enormously increased since. It is a pity that the whole of the reclamation scheme was not carried out.

In 1925-26, K. F. Nariman started a vigorous campaign against the administration of the Development Department and particularly in relation to the construction of chawls and industrial housing. He spoke about this in the Bombay Legislative Council and also wrote to the papers. Harvey who was Superintending Engineer prosecuted Nariman for defamation before the Chief Presidency Magistrate. The case lasted for over a year. Velinkar instructed by the Government Solicitor appeared for the prosecution and Nariman conducted his own defence. The prosecution witnesses were severely cross-examined by Nariman and he put in a written statement of defence consisting of over 150 typed pages. Soon afterwards, Harvey went on long leave and never returned to India. Nariman did not call any evidence for defence and the court gave judgment holding that although the specific allegations made against Harvey were not proved, Nariman had made these allegations *bona fide* and for the public good and acquitted Nariman.

SUKKUR BARRAGE

Soon after I took over the department of Irrigation, Sir George Lloyd spoke to me about the Sukkur Barrage Project and asked me to study the papers in connection therewith. This project had been under consideration for 30 years and various expert committees had been appointed from time to time and had made their reports. Sind, being an agricultural province with scanty rainfall, cultivation depends on the waters of the Indus. The

water is taken by canals into the agricultural area. If the waters of the Indus overflow, then the agricultural area is submerged. If the level of the waters of the Indus gets low, the water does not go into the canals. It was therefore considered desirable to construct a barrage across the river at some convenient spot whereby the level of the water could be regulated and maintained at the desired level.

With this objective, the Government of India and the Government of Bombay had under consideration for many years various schemes, and different locations and plans for the construction of a barrage. Owing, however, to a conflict of views among the experts, no final decision had been taken. Sir George Lloyd with his characteristic energy and drive took up the question and a scheme for putting up the barrage near Sukkur and the plans thereof were finally approved by the Secretary of State for India. All the details were worked out by the Irrigation department and the scheme was estimated to cost about 17 crores of rupees. It was also decided that the scheme should be executed departmentally and not by contractors.

A meeting of the Legislative Council was convened for June 8, 1923, for approving the scheme and sanctioning the necessary expenditure. After notices for the meeting had been issued, one evening I got a phone message from Sir George Lloyd to go and see him. He showed me a cable from the Secretary of State saying that as further doubts had been raised by some experts about the scheme that had been approved, he considered it desirable to appoint a fresh committee to go into the matter. He had also suggested that it was desirable that the scheme should be executed on contract and not departmentally. Sir George Lloyd was furious at this attempt of the Secretary of State to delay the scheme further which had hung fire for over 30 years and which if not put through immediately might never be carried out. I agreed with him that the Secre-

tary of State was not justified in blocking the scheme at that stage after having sanctioned it. He then drafted a cable to the Secretary of State pointing out the inadvisability of any postponement and that if the Secretary of State insisted upon delaying the scheme he (Sir George Lloyd) would have no alternative but to go to the Legislative Council himself and explain his own view and say that the Secretary of State was at the last moment holding up the scheme. After drafting the telegram, he said to me "If this involves my resignation, I am ready." Next day, the Secretary of State cabled withdrawing his objection. Some days before the date of the meeting of the Legislative Council it became apparent that the scheme was going to meet with strong opposition in the Council. Some one had started the rumour that the millions of acres of land expected to be brought under cultivation when the barrage was constructed, were going to be taken over by some foreign companies and that the people of Sind would not be benefitted.

On June 8, 1923, I moved the following resolution in the Legislative Council:

> "That this Council approves of the Sukkur Barrage Project as sanctioned by the Secretary of State and recommends to the Governor-in-Council that the work should be commenced as soon as possible."

Various amendments had been given notice of with a view to delay the scheme. After I had moved my resolution, several members took part in the discussion. It was apparent that some of the speakers who were hostile to the scheme were uninformed and displayed in their criticisms ignorance about the bearings of the scheme. As the debate went on, we on the Treasury Bench were getting somewhat apprehensive as to the result of the voting. The Council sat late to finish the debate. A little before the time arrived for me to reply, one of my colleagues in Government who was sitting next to me whispered to me:

"Setalvad, a good many of the members who spoke were so misinformed and inaccurate that you will be able to pulverise their arguments very easily." I replied: "I can easily do that but then I would lose the vote. I am going to adopt altogether different tactics." When I got up to reply I began by thanking the various honourable members who had criticised the scheme, for what I described as helpful and constructive criticism. I assumed that they were all for the scheme but were anxious to see that the scheme should become a success and for that purpose had pointed out the possible dangers and pitfalls. I assured them that Government would take every care and bear in mind their valuable suggestions in carrying out the project. All this naturally flattered their vanity. I further gave them the assurance that there was no foreign company or syndicate that had applied to take up the lands to be irrigated by the barrage and that if the question ever arose in the future whether any syndicate or company should be allowed to purchase land to be irrigated by the new canals, "Government will favour the condition that such syndicate or company should be largely Indian in capital and control and will give the House an opportunity of discussing the question before it is decided." As I was proceeding with the reply, I could see a visible change of atmosphere. I ended by making the following moving appeal:

> "Sind is waiting expectant on the verdict of this House, and I beseech the House to think well and to think wisely before you vote. I am confident, Sir, that the verdict of this House will be one which will be inscribed in letters of gold for future generations to admire the wisdom, the foresight and courage in doing a big thing for Sind and for this presidency."

When I concluded, amendments that had been moved were all withdrawn except one which had been moved by Harilal Desai which was put to the vote and lost. On my

proposition being put to the vote, there was only one dissentient, Harilal Desai. On the following day, I received a letter from Sir George Lloyd which said :—

> "Let me offer you my sincere congratulations on the skill with which you piloted the Sukkur Barrage Scheme through the Council. It gave me the greatest satisfaction to hear that the scheme had been passed and this great enterprise is now after 30 years' discussion, ripe for inauguration."

RESIGNATION

In June 1923 I resigned the membership of Council and reverted to the Bar. My resignation was no surprise as when I had accepted office, I had made it clear that I might not remain in office for the full period of five years. My letter of resignation and the Governor's reply are given below.

Bombay, June 11, 1923.

Your Excellency,

Your Excellency will remember that in October 1920 I resigned from the High Court in order to become a member of the reformed Legislative Assembly to which I was duly elected. But in December 1920, I felt it my patriotic duty to accept Your Excellency's invitation to serve as a member of your Executive Council. For some months past, however, I have been feeling very strongly that in the present state of politics in the country and looking to the needs of my party with a General Election imminent, it is my imperative duty to resign office and seek re-election to the Legislative Assembly.

I desire to assure Your Excellency, however, that I am resigning my office with deep regret for the two and a half years of strenuous and highly responsible duties of a member of Government have bought me in close association with colleagues whose kindness, encouragement and help

I will always gratefully remember. My relations with Your Excellency, in particular, have been throughout of the most cordial character and they will, I am sure, continue to be the same in whatever spheres of activity we may drift in the future. With my other colleagues, Members and Ministers, I have had the most pleasant and friendly relations. Among the large body of public servants—executive and judicial who have throughout loyally and ably assisted me in administering the important departments of Government, I have made many friends. To cut myself away from these associations and surroundings has, therefore, been neither pleasant nor easy. The only compensation is that I am returning to the free atmosphere of my profession and larger public life both of which I have always loved above everything else.

Yours sincerely,
C. H. Setalvad.

12th June 1923.

My Dear Sir Chimanlal,

It is with deep regret that I have received your letter and have decided that the resignation you have tendered me must be accepted. I fully realise, however, and endorse your motives and the sense of public duty which has prompted you to take this course and I desire to express to you my warm appreciation of the great services you have rendered to Government and to the presidency during your term of office and my sense of personal loss that our official relations, which have always been of the friendliest, are now so soon to be cut short.

I should like also to assure you of my warmest wishes for your success in the public life to which you have elected to return.

Yours sincerely,
George Lloyd.

REFORMS IN THE MAKING

THE Government of India Act of 1919 was enacted by Parliament on December 23, 1919 whereby dyarchy was created in the provinces with certain transferred subjects to be administered by the Governor on the advice of Ministers responsible to the legislature consisting almost wholly of elected non-official members. The Central Legislative Assembly was constituted with a substantial non-official majority. Owing to various causes and circumstances already narrated, the new constitution started with a great handicap as the Congress Party stood aloof. At the end of the first three years of the various legislative assemblies the Congressmen led by the Swarajist Party, founded by Pandit Motilal Nehru and Mr. C. R. Das, contested the elections and came in substantial numbers in the various legislatures.

Section 41 of the Government of India Act 1919 had provided that at the expiration of ten years after the passing of the Act of 1919, a Royal Commission was to be appointed "for the purpose of inquiring into the working of the system of Government".........."development of representative institutions in British India" and this Commission was to report "whether and to what extent it is desirable to establish the principle of responsible government or to extend, modify or restrict the degrees of responsible government then existing."

It was urged in the Central Assembly that the reforms did not go far enough and that the period of ten years for the appointment of the Royal Commission was too long and that the Commission should be appointed earlier. The Government of India accordingly appointed a Reforms Enquiry Committee under the chairmanship of Sir Alexander Muddiman to consider the whole question.

In my memorandum submitted to that Committee, I pointed out that the object of the new constitutions as laid

down by the Montagu-Chelmsford Report and the report of the Joint Parliamentary Committee had not been adhered to. The idea was that regarding Transferred Departments, responsibility was really to be placed on the Ministers and the Governor was to be in the position of a constitutional head. That was the intention underlying section 52 clause 3 of the Government of India Act, 1919. Governor Lloyd however, claimed that the Minister's function in law was merely to give him advice but it was open to him not to accept it for any sufficient reason. The result was that the Ministers were never sure of their ground and the Governor claimed more powers in the administration of the Transferred Departments than he had in the Reserved. In the case of a Reserved Department, if the Member in charge and the Governor differed on any matter, the vote of the whole Council could be taken and the decision of the majority was binding on the Governor except in certain exceptional cases involving the safety and tranquillity of the Province. The Ministers, however, did not allow themselves to be overruled by the Governor when any question of vital principle was concerned. This did not lead to the smooth working of the machine. The report of the Committee was not unanimous and there were majority and minority reports.

Sir Alexander Muddiman moved in the Indian Legislative Assembly on September 7, 1925, a resolution supporting the majority report of the Reforms Enquiry Committee. Pandit Motilal Nehru in a comprehensive amendment in effect demanded the convening of a Round Table Conference for the preparation of an agreed constitutional scheme for India. Pandit Nehru's amendment was adopted by the Assembly by a large majority.

THE SIMON COMMISSION

In December 1925, Lord Birkenhead in the House of Lords spoke of the possibility of accelerating the Commission ordinarily due in 1928. People in India believed that

this was a concession to incessant Indian demand for an early revision of the constitution. The real motive, however, underlying the acceleration of the Commission was entirely different. The whole object of Lord Birkenhead and the Conservative Government then in power was not to leave the Commission to be appointed by the Labour Government which it was felt would almost certainly come into power. Another object was to use the appointment of the Commission as a bargain counter and to disintegrate the Swarajist Party.

In his private letter to Lord Reading dated December 10, 1925, Lord Birkenhead said that in suggesting the acceleration of the Commission, "I always had it plainly in mind that we could not afford to run the slightest risk that the nomination of 1928 Commission should be in the hands of our successors. You can readily imagine what kind of a Commission in its personnel would have been appointed by Col. Wedgewood and his friends. I have, therefore, throughout been of the clear opinion that it would be necessary for us as a matter of elementary prudence to appoint a Commission not later than the summer of 1927. I should, therefore, like to receive your advice if at any moment you discern an opportunity for making this a useful bargain counter or for further disintegrating the Swarajist Party." He further said: "I am sure that having regard to political contingencies in this country, we must keep the nomination of the personnel of the Commission in our own hands. In this matter, we cannot run the slightest risk. My present view, therefore, is—and I believe that the Prime Minister shares it—that we shall in any event, be playing for safety if we are driven to nominate the Commission in the middle of 1927. If such an acceleration affords you any bargaining value, use it to the full and with the knowledge that you will be supported by the Government."

The appointment of the Commission with no Indian Members on it was announced by the Secretary of State

early in November 1927. The excuse given for not appointing any Indian on the Commission was that the intention of the framers of the Act of 1919 was to confine the Commission to Members of Parliament. The Act does not lay down any such restriction. But even if the British Government wanted to restrict the nomination to members of Parliament, there were two Indian members at the time. One was Lord Sinha in the House of Lords and the other was Mr. Shapurji Saklatwala in the House of Commons. Lord Sinha had been closely connected with the various stages of the constitutional reforms in India and his presence on the Commission would have been very valuable. The real thing was that they did not want any Indians on the Commission. Lord Irwin who succeeded Lord Reading and the members of his Council which consisted of three Indian members had (with one notable exception) approved of an entirely European composition of the Commission. It was understood at the time that Sir Mahomed Habibullah was in favour of inclusion of Indians in the Commission.

The announcement of what was then popularly described an All-White Commission evoked universal protest and dissatisfaction in the country. A weighty manifesto was immediately issued protesting against the composition of the Commission excluding Indians from having any authoritative voice either in the collection of proper materials and evidence or in the taking of decisions by way of recommendations of the Commission to Parliament. The manifesto was signed among others by Sir Dinshaw Petit, the President of the Federation of Indian Chambers and of the Industrial and Commercial Congress; Sir Ali Imam, an ex-member of the Viceroy's Executive Council; Sir Abdur Rahim, President of the Bengal Provincial Muslim League and now President of the Indian Legislative Assembly, Sir P. S. Sivaswamy Aiyar, ex-Member of the Executive Council of the Governor of Madras, Sir Tej Bahadur Sapru, ex-Law Member of the Government of India, Sir Purshottamdas Thakurdas, Mr. (now Sir) H. P.

Mody, Mr. M. A. Jinnah, President of the All-India Muslim League and the leader of the Independent Party in the Indian Legislative Assembly and myself.

A mass meeting of the citizens of Bombay was held on November 19, 1927 in the Sir Cowasji Jehangir Hall, Sir Dinshaw Petit presiding. The following proposition, moved by myself and seconded by Mr. Jinnah, was adopted.

> "This public meeting of the citizens of Bombay emphatically declares that the Statutory Commission which has been announced is unacceptable to the people of India as it most flagrantly denies the right of the Indian people to participate on equal terms in framing the future constitution of the country. This meeting further resolves that under the circumstances Indians throughout the country should have nothing to do with the Commission at any stage or in any form."

On November 28, Mr. Jinnah issued a statement to the Press after the debate on the Statutory Commission in Parliament, strongly condemning the composition of the Commission. On December 3, 1927, the citizens of Bombay met again in the Sir Cowasji Jehangir Hall on a requisition signed by leading citizens of Bombay among them being Mr. M. R. Jayakar, Mr. M. A. Jinnah, Sir Purshottamdas Thakurdas, Mr. B. J. Desai, Mr. (now Sir) V. N. Chandavarkar and many others. I was called to the Chair. Mr. Bhulabhai Desai moved the first resolution and it was supported among other persons by Mr. Jinnah. In his speech referring to some Muslims who were wavering Mr. Jinnah said :—

> "Believe me and I am not exaggerating when I say that it is because they are misled and because they do not understand the issue properly that some of them are still wavering. I expect and I have every hope that they will not lag behind the Hindus in any way, but will work with Hindus, Parsis and Christians

and go through the ordeal of a united people. I warn those who want to exploit Mahomedans to leave off this dirty game. If they try it, they will fail miserably as they have failed in the past. I appeal to you, Hindus, not to pass your judgment on the Mussalmans prematurely. Don't doubt them or blame them. I appeal to you, the major community, to be true to your faith, and if you do that, let me tell you that the minor communities, including the Mussalman community will follow you."

On December 11, Mr. Jinnah issued a statement in answer to what he called "insidious and mischievous propaganda carried on by some newspapers to seduce and mislead Indian Muslims by false and unworthy arguments in favour of accepting the Statutory Commission." The reason for his issuing this manifesto was to counteract two manifestoes one from the Punjab and the other from Bengal by some Muslims exhorting the Muslim community to co-operate with the Commission. The manifesto of Mr. Jinnah concluded:

"Therefore, whether you take the broad principle of national self-respect or the petty and short-sighted consideration of self-interest, the Mussalmans cannot stand to gain by accepting the present Commission. They will only go down to history as disloyal to the country at a critical juncture of its political development justly accused by other communities of having played false not only to them but to their own motherland. I am confident that my community will not adopt any such course or go astray, however much interested persons may press them to do so."

Very serious efforts were made by the authorities to seduce the Muslims and divide them from the Hindus. In his letter to the Viceroy in February 1928, Lord Birkenhead said: "The whole policy now is obvious. It is to terrify the immense Hindu population by the apprehension that

the Commission is being got hold of by the Muslims and may present a report altogether destructive of the Hindu position, thereby securing a solid Muslim support and leaving Jinnah high and dry." One cannot imagine a more calculated and despicable policy of *divide et impera.*

On February 3, a very crowded meeting of the citizens of Bombay attended by 50,000 people was held on Chowpaty sands at which I presided. A resolution condemning the composition of the Commission was enthusiastically adopted. On December 27, 1927, the 10th session of the National Liberal Federation was held in Bombay under the presidency of Sir Tej Bahadur Sapru. In my address as Chairman of the Reception Committee, I controverted the excuse put forward by Lord Birkenhead for the exclusion of Indians from the Commission viz: that the framers of the Government of India Act of 1919 had in their minds the appointment of a purely Parliamentary Commission and pointed out that the Secretary of State must indeed have a desperate case to support when he was driven to adopt such an argument, for the words of the section regarding the Commission laid down no such restrictive provision. An Anglo-Indian paper in Bombay had made an equally desperate attempt to justify the composition of the Commission by saying that the device of investigation by a Royal Commission was the special product of British genius and that, therefore, in order to achieve the best result, its composition should be exclusively British.

The Commission received very hostile reception on their landing in Bombay with shouts of "Simon Go Back" on the route from Ballard Estate to Government House.

The Bombay Youth League had organised a demonstration. A procession of several hundred students assembled at the gate of the Alexandra Docks and they were subjected to a lathi charge by the Police. Mr. Y. J. Meherally who was the General Secretary of the Bombay Youth League and was in charge of the procession receiv-

ed considerable injury. Subsequently, a prosecution was launched against Sergeant Carter who was responsible for the lathi charge. This case came up before Mr. M. S. Pandit who was acting Presidency Magistrate. The case dragged on for eight months. Mr. Pandit found Carter guilty and fined him Rs. 50. Carter applied in revision to the High Court. When the revision application came before the Second Appelate Court which usually dealt with criminal matters, the Judges instead of straightaway admitting the revision, called for the record and proceedings in order to satisfy themselves whether the revision application should be admitted. The Chief Justice thereafter formed a bench of himself and Kemp J. to hear the revision application. That bench set aside the conviction of Sergeant Carter. Soon afterwards Mr. Meherally who had passed the LL.B. examination applied to the High Court for sanad to practise on the Appellate Side. After several months, the High Court refused Mr. Meherally's application without giving any reasons. Mr. Meherally applied again and the Bar Council supported his application but it was again turned down. As far as one knows, this was the first and only instance in which an application for a sanad was refused. The result of this unwise act of the High Court was to turn Meherally into a bitter opponent of Government. Mr. Pandit who was acting as Presidency Magistrate was not confirmed.

The Commission proceeded to Delhi and in order to assuage the feelings in the country, Sir John Simon wrote a letter on February 6, to the Viceroy regarding the procedure to be followed and it was published. He proposed that the Commission should take the form of a "Joint Free Conference" over which he should preside and which should consist of the seven members of the Commission and a corresponding body of representatives chosen by the Indian Legislatures just as the British members had been chosen by the British Parliament. All the material prepared by the Government of India and the provincial governments

for submission to the Commission and the evidence given in explanation or amplification of this material, he said, would come before this Joint Free Conference. Non-official members of the Central Legislature who had assembled at Delhi for the budget session promptly turned this down. Within two or three hours of the issue of the letter they met and issued the following statement :—

> "We have most carefully considered the line of procedure indicated in the statement of Sir John Simon. But our objections to the Commission as constituted and the scheme as announced, are based on principles which remain unaffected by it. In the circumstances, we must adhere to our decision that we cannot have anything to do with the Commission at any stage or in any form."

The question was debated in the Legislative Assembly on a motion of Lala Lajpat Rai on February 16, 1928. Briefly, the resolution declared that the constitution and the scheme of the Commission were wholly unacceptable to the House and that the Legislative Assembly would have nothing to do with it at any stage or in any form. At the end of the debate, on a division being taken the resolution was declared carried by 68 votes to 62 in an assembly which included about 50 official and nominated members. Hardly had this result been declared, when a reporter of a local daily paper threw down an attache case from the Press Gallery on Sir Basil Blackett's head. He was stunned for a moment but suffered no serious injury.

When the news of the vote of the Assembly was received in Bombay, there was considerable jubilation among the politically-minded people of this city. That evening, the event was celebrated by the members of the Bar at the Bar Gymkhana at Chowpatty, when I stood drinks to all members present.

Ultimately, an Indian Auxiliary Committee presided over by Sir Sankaran Nair was nominated by Government

to work in collaboration with the Commission. But the boycott was not lifted.

Towards the end of March 1928, the Simon Commission was passing through Bombay *en route* to England for taking a holiday. Sir Leslie Wilson who was then the Governor was very anxious that some acceptable settlement should be arrived at whereby the Indian public may co-operate with the Commission. I told him that the only solution acceptable to Indians would be the inclusion of Indian Members in the Commission with equal status and position. He then suggested that some of us should meet Sir John Simon when he came to Bombay and was staying at Government House before his departure. I then consulted, Sapru, Jinnah and other friends about the proposal and ultimately the conclusion was reached that it was not desirable to have such a meeting as our action in meeting Sir John Simon might be misunderstood. On March 28, Sir Leslie wrote to me that Sir John Simon was arriving in Bombay shortly and that he had asked some people to dinner to meet him and enquired whether I would join and if I was agreeable, he would send me an invitation. On that, I wrote to Sir Leslie saying that as the dinner was officially announced for the purpose of meeting Sir John Simon, I felt myself unable under the then existing circumstances to accept the invitation.

After their second visit to India, the Simon Commission made their report in June 1930 but as the Round Table Conference plan superceded this Commission, nobody in India or England attached importance to the recommendations of this unwanted Commission.

AN ALL-PARTIES CONFERENCE

Lord Birkenhead had criticised the attitude of Indians in not co-operating with the Simon Commission and he challenged them to produce a scheme for the constitution of India instead of indulging in merely destructive criti-

cism of government plans. As a result of this, an All-Parties Conference was held in Bombay on May 19, 1928 over which Dr. M. A. Ansari presided. That conference appointed a committee under the chairmanship of Pandit Motilal Nehru to consider and determine the principles of a constitution for India. The committee submitted a comprehensive report on the various aspects of the new constitution for the whole of India including the Indian States in August 1928. They decided that the Indian States should come into the Commonwealth but did not lay down any detailed provision regarding the position of the States in such a Commonwealth because there had been no contact between the Committee and Indian States. They however laid down generally that all treaties made between the East India Company and the Indian States and all such subsequent treaties so far as they were in force shall be binding on the Commonwealth and that the Commonwealth shall exercise the same rights in relation to and discharge the same obligations towards the Indian States as the Government of India exercised and discharged previously. They further recommended that in regard to matters of justiciable character, in case of difference between the Commonwealth and Indian States on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General-in-Council may with the consent of the State concerned refer such matters to the Supreme Court for its decision.

As regards the communal question, while providing for fullest protection for the religious and cultural interests of the Muslim community, the report recommended joint electorates with reservation of seats on population basis for the minorities as well as majorities in general elections. Their scheme of representation was based on adult franchise. The All-Parties Conference again met at Calcutta on December 22, 1928 under the chairmanship of Dr. Ansari where this report was presented. As regards the communal question. Mr. Jinnah on behalf of the All-

India Muslim League moved various amendments to the report. The first was that one-third of the elected representatives of both the houses of the Central Legislature should be Mussalmans. This was negatived. Secondly, he wanted that in the event of adult franchise not being established in the Punjab and Bengal, there should be reservation of seats for the Mussalmans on a population basis for ten years subject to re-examination after that period, but they should have no right to contest additional seats. This was also negatived. Thirdly he wanted that residuary powers should vest in the provinces. That was also negatived. Fourthly, he wanted that no amendment of the constitution could be made unless it was first passed in both the Houses of Parliament separately by a majority of 4/5th and was approved by a similar majority of both the Houses in joint session. This was unanimously accepted. It is noteworthy that Mr. Jinnah at that time did not want separate electorates or weightage for Muslims. Sir Tej Bahadur Sapru pressed the Conference to accept Mr. Jinnah's suggestions in order to secure a settlement. He said :

> "The simple position is that for the sake of settlement you are invited by Mr. Jinnah, however illogically and unreasonably, to agree to this proposition, which I consider not inconsistent with the Nehru Report. Speaking for myself, I would like you to picture Mr. Jinnah, whom I have known intimately for 15 years, as a spoilt child. If he is a spoilt child, a naughty child, I am prepared to say, give him what he wants and be finished with it. I am not going to ask him to be reasonable but we must, as practical statesmen, try to solve the problem and not be misled by arithmetical figures."

Mr. Jayakar on the other hand, claiming to represent the Hindu view, strongly opposed Mr. Jinnah's suggestion. He denied Mr. Jinnah's right to speak on behalf of the Muslims, saying that he represented a small minority of

Muslims. Looking to subsequent events, one cannot but regret that on this occasion the opportunity of bringing about a peaceful settlement of the communal question was lost. I do not think Mr. Jayakar in the light of present conditions can say that Mr. Jinnah' now represents only a small minority of Muslims. Mr. Jayakar was destined to miss another golden opportunity to settle the communal problem in London at the time of the Round Table Conference in 1930.

In those days there were two factions in the Muslim League, one led by Mr. Jinnah who took the nationalist point of view while safeguarding in certain ways the Muslim interests that required protection. The other faction prominent among which were the Ali Brothers represented the reactionaries and communalists. Shafi who also represented the communalist point of view had resigned from the League in 1927. After the Calcutta Convention these Muslim Leaders who dissociated themselves from the view of Mr. Jinnah organised a Muslim Conference at Delhi on January 1, 1929 with His Highness the Aga Khan as Chairman. Dissenting members of the Muslim League and the Khilafat Committee members joined this movement. The conference made the following demands;

(a) the continuance of separate electorates;

(b) the securing to Mussalmans their "due" share in the Central and Provincial Cabinets:

(c) the adoption of a "plan" to secure the election of Mussalmans for a majority of seats in the legislatures in Provinces where they constitute a majority of the population:

(d) the continuation of the present weighted representation of Mussalmans in provinces where they constitute a minority of the population;

(e) securing to Mussalmans their "adequate share" in all services of the State and on all statutory and self-governing bodies.

The Congress at its session on December 31, 1928 passed the following resolution.

"This Congress, having considered the constitution recommended by the All-Parties Committee Report welcomes it as a great contribution towards the solution of India's political and communal problems and congratulates the committee on the virtual unanimity of its recommendations and, whilst adhering to the resolution relating to complete independence passed at the Madras Congress, approves of the Constitution drawn up by the Committee as a great step in political advance, especially as it represents the largest measure of agreement attained among the important parties in the country."

"Subject to the exigencies of the political situation this Congress will adopt the constitution if it is accepted in its entirety by the British Parliament on or before December 31, 1929; but in the event of its non-acceptance by that date or its earlier rejection, the Congress will organise a campaign of non-violent non-co-operation by advising the country to refuse taxation and in such other manner as may be decided upon."

"Consistently with the above, nothing in this resolution shall interfere with the carrying on, in the name of Congress, of the propaganda for complete Independence."

A session of the All-India Muslim League was convened in March 1929. The Subjects Committee of the League session which met on March 31, approved of the Nehru report by a majority subject to certain specified safeguards which Jinnah had advocated at the Calcutta Convention. At the open session of the League, this resolution was adopted by a majority.

ROUND TABLE CONFERENCES

At a meeting of the Central Legislative Assembly in February 1924, Sir Malcolm Hailey, the then Home Member of the Government of India, in winding up the debate on "the grant of full self-governing Dominion Status to India" expressed the opinion that the term "full dominion self-government" was of wider extent than the expression "responsible government" by itself. He thought that the full dominion self-government implied that not only would the executive be responsible to the legislature, but that the legislature would in itself have the full powers which are typical of the self-governing dominions. He thought that responsible Government was not necessarily incompatible with a legislature with limited or restricted powers. This utterance by a responsible member of the Government of India had created grave doubts in the minds of the Indian public as to the real intentions of the British Government regarding the political evolution of India.

Lord Irwin, while he was on leave in England early in 1929, discussed the matter with the British Government and on his return issued a statement on October 31, 1929 in which he indicated that the best method of settling the Indian political question was to hold a conference where Indian delegates and British responsible authorities could discuss the question and find a proper solution. At such a conference, he also said, it was desirable that the Indian States should be represented as in any future constitution of India the relations between British India and the States should be regularised. He clearly enunciated the intention of the British Government about the political evolution of India in the following terms :—

> "But in view of the doubts which have been expressed both in Great Britain and India regarding the interpretation to be placed on the intentions of the British Government in enacting the Statute of 1919, I

am authorised on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status."

On December 23, 1929 Lord Irwin returned from his tour in South India. When his train was nearing New Delhi, a time bomb which had been placed on the rails exploded. Lord Irwin narrowly escaped but his dining saloon was damaged and one of his servants was hurt. On that afternoon Gandhi and Motilal Nehru met the Viceroy. At that meeting Gandhi presented a long list of demands which in his opinion, and that of the Congress, were first to be conceded before Congress could agree to attend the proposed conference. The demands included, the immediate grant of full Dominion Status, and that the conference should meet on that basis. The Congress leaders and Lord Irwin were unable to arrive at an agreement. The Congress session was held towards the end of 1929 at Lahore where the following resolution was passed:

> "This Congress endorses the action of the Working Committee in connection with the manifesto signed by party leaders, including Congressmen, on the Viceregal pronouncement of October 31, relating to Dominion Status, and appreciates the efforts of the Viceroy towards a settlement of the national movement for Swaraj. The Congress, however, having considered all that has since happened and the result of the meeting between Mahatma Gandhi, Pandit Motilal Nehru and other leaders, and the Viceroy, is of opinion that nothing is to be gained in the existing circumstances by the Congress being represented at the proposed Round Table Conference. This Congress, therefore, in pursuance of the resolution passed at its session at Calcutta last year, declares that the word "Swaraj" in Article I of the Congress Con-

stitution shall mean Complete Independence, and further declares the entire scheme of the Nehru Committee's Report to have lapsed, and hopes that all Congressmen will henceforth devote their exclusive attention to the attainment of complete independence for India. As a preliminary step towards organising a campaign for independence, and in order to make the Congress policy as consistent as possible with the change of creed, this Congress calls upon Congressmen and others taking part in the national movement to abstain from participating directly or indirectly in future elections, and directs the present Congress members of the legislatures and committees to resign their seats. This Congress appeals to the nation zealously to prosecute the constructive programme of the Congress, and authorises the All-India Congress Committee, whenever it deems fit, to launch upon a programme of civil disobedience, including non-payment of taxes, whether in selected areas or otherwise and under such safeguards as it may consider necessary."

CIVIL DISOBEDIENCE. DANDI MARCH

The Working Committee of the Congress met at Ahmedabad on the 14th, 15th, and 16th of February 1930 and decided to authorise Mr. Gandhi and those of his followers who had complete faith in his doctrine to start civil disobedience. This was later enlarged by the A.I.C.C. that met shortly after at Ahmedabad into a general campaign of civil disobedience.

On March 12, 1930, Mr. Gandhi started his famous march on foot to Dandi. As he passed from village to village and town to town, his camp began to swell and when he reached Dandi, he had numerous followers. At the end of 24 days, Mr. Gandhi reached Dandi on April 5. The Civil Disobedience Movement spread everywhere but at first was confined only to breaking the salt laws by re-

sorting to unauthorised manufacture of salt. It was a comic sight to see some Congressmen and women boiling sea water at Chaupatty sands and producing salt. In the city of Bombay bands of students shouting "Boycott British Goods" paraded the streets. There were organised processions and demonstrations, and the police were hard put to disperse them by lathi charges. Gandhi was arrested at Dandi on April 5, and taken to Yerawada.

Hartals were the order of the day and rioting took place in many places between 6th April and 7th July. On 11th April,, serious disturbances broke out in Bombay, Calcutta and various other places. Rioting also broke out in Sholapur resulting in the burning of six police chowkies and the killing of some policemen. This led to police firing in which 25 were killed and about 100 persons wounded. During the month of May, an All Parties Conference was held in Bombay under the chairmanship of Sir A. P. Patro to suggest a solution of the deadlock but it failed to reach any conclusions on the constitutional questions and the civil disobedience movement which it had assembled to consider.

About this time, the Viceroy called various Indian leaders for consultation regarding the situation. I had a long talk with Lord Irwin on the subject. The Viceroy also had consultations with Sapru, Jayakar and some other leaders at which the Round Table Conference scheme was discussed. A meeting of the Council of the Liberal Federation was held to consider the political situation. The Council while unequivocally condemning the Civil Disobedience Movement, urged the Viceroy to speed up the preparations for the proposed Round Table Conference. It also stressed the importance of the Government indicating the terms of reference and the scope of the Round Table Conference, "in order that even at this stage those who keep aloof may join hands with the Liberal and other Parties who are willing to go to the Conference." It

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further laid stress on the simultaneous cessation of Civil Disobedience and the initiation of active conciliation on the part of the Government, to be manifested by "release of those whose freedom has been restrained for political reasons, and the taking of all political parties into Government's full confidence."

On May 13, His Excellency the Viceroy made an important statement and released the correspondence that had passed between him and the Prime Minister. In that statement, Lord Irwin made it clear that the Civil Disobedience movement had not deflected either His Majesty's Government nor the Government of India in the least degree from the policy with regard to constitutional reforms which had been announced during the previous autumn and that although the Congress had refused to participate in it, the Round Table Conference would be held in London as arranged. As regards the choosing of the personnel of the Conference, Lord Irwin declared that after examining several alternative methods and discussing the matter with several prominent leaders, he had reached the conclusion that fair distribution of representation could only be assured by invitations in consultation where possible with the interests concerned.

It was in this tense atmosphere that the holding of the Round Table Conference was announced. Those of us who accepted the invitation to go to the Round Table Conference were denounced and abused, and I got several letters threatening that if I started from my house to catch the steamer, Congress volunteers, both male and female, would squat down in the street and prevent my car from proceeding. But this threat did not materialise.

FIRST ROUND TABLE CONFERENCE 1930

The Indian Liberal Party was strongly represented at this Conference. There were in all 13 Liberals. After we reached London well in advance of the date fixed

for the Round Table Conference, it was arranged that some representatives of Hindus and of Muslims should meet to consider the question of a communal settlement. Sapru, Sastri, myself, Jayakar, Moonje and Ambedkar were deputed for this meeting and the Aga Khan, Jinnah and one other gentleman represented the Muslims. The meetings were held at the residence of H. H. the Nawab of Bhopal and we met night after night continuously for several days. H. H. the Nawab of Bhopal was very helpful and was anxious that a settlement should be arrived at. When we first met, I put the question to the Aga Khan, whether if we arrived at a satisfactory settlement on other points, he would agree to joint electorates. He said "if you satisfy our demands on all other matters we would agree to joint electorates with reservation of seats for Muslims." I put a further question "If we came to a settlement on all matters including joint electorates, will the Muslim delegates support the national demand at the Conference?" His answer was characteristic. He said "In that event you lead and we follow."

Then we asked him what were their demands for settlement. He then stated that the principle demands were that they wanted Sind and the N. W. Frontier Province to be made separate provinces, that in the provincial legislatures, the Muslims should have a reasonable weightage and that in the Central Legislature, the Muslims should have one-third of the total number of seats. At that time the idea of Federation with the States sending their representatives to the Central Legislature was not contemplated. Sapru, Sastri and myself would have agreed immediately to these demands and secured joint electorates. We were, however, seriously disappointed in the attitude of Jayakar and Moonje. We first took up the question of Sind being made a separate province. Jayakar and Moonje brought forward various conditions which in their view should be fulfilled before Sind could be a separate province. We occupied several evenings on this one question alone.

The discussion on other points dragged on for many nights. In the meantime, reactionary elements among the Muslim delegates in London as well as reactionary Muslims in India, getting scent of what was happening at our meetings, got busy, and pressure was brought to bear upon the Muslim representatives at our small Conference. Ultimately, one night the Aga Khan said that the matter was now out of his hands and he felt that he could not bind the Muslim representatives by any agreement that he would like to enter into. A great opportunity was thus lost. If Sapru, Sastri and myself could have helped it, we would have at once conceded the demands of the Aga Khan and made him and other Muslims representatives sign for joint electorates. If this had happened, the subsequent political history of India would have taken a different turn.

On November 20, 1930 speaking at the plenary session of the First Round Table Conference, I referred to the several speeches that had been made on the British side for going slow in reforms. I said :—

> "It has been said that you ought to go by easy stages, that you must not quicken the pace, that you must be satisfied for the present with the sort of provincial autonomy reported on by the Statutory Commission. When that was said my friend Sir Tej Bahadur Sapru interjected "Bogus", and I entirely agree with him in that description of the provincial autonomy recommended by the Statutory Commission.
>
> "Those who say "Go slowly ; do not quicken the pace" are like some guardians who will never realise that the ward is no longer a ward but has now become a self-determined adult. Those guardians and those politicians who take that view are sadly mistaken. The ward who has now become a self-determining adult is determined to have his way, to come into his own, to have the management of his own estate in his own hands. It does not do for the guardian to say "If I

hand over your inheritance to you, you may mismanage it, you may manage it inefficiently, and you will commit mistakes." Mr. Prime Minister, we are perfectly conscious that we may commit mistakes and that for some time our administration may be comparatively inefficient, but we are determined to go through that stage, for we want to come into our own. We may not manage things as efficiently as you are doing now, but it is our affair and we want to be allowed to manage it ourselves.

"It has been said that if we take a constitution from here, a full democratic constitution, the moment that is given, power will be wrested from us, the Delegates who have come here, by the people who have recently created all the trouble in India. I will not repeat the answer given very effectively to that suggestion by my friend Mr. Sastri. I beseech the British Delegation to think of the alternatives before them and to choose wisely. You can satisfy Indian aspirations and give power to India in her own affairs, and then, as sure as fate, those people whom you call irresponsible at present, who are creating all the trouble in India, will be the first to come in and work that constitution in an orderly manner. On the other hand, if you do not do that, you can make up your minds, I do not say this as a threat, but with all gravity and with all the emphasis I can command, that the future is very black indeed both for India and England. If you do not grant now what India wants, the position will be this, you will have to enter into a long-drawn struggle, increasing every day. You may put down disorder, you are bound to put it down, and you will do so; but at every stage it will, sooner or later, again break forth with increased vigour, and you cannot rule 320 million people continuously by force and by military power.

"I trust, therefore, you will make a wise choice. You can make India discontented, which will mean ruination for her and may mean ruination to England, or you can make now a contented India which will be the brightest jewel in the Empire and its greatest glory, and which will enhance the reputation of the Empire, which with all its faults, has excited not only the admiration, but even the envy of the rest of the world."

I said this in 1930 and events from 1931 till now have proved the truth of what I said. The halting attitude of the British has largely contributed to the present state of Indo-British relations.

FEDERATION

Most of the delegates from British India had gone to London with the object of securing responsible self-government for British India. They were agreeably surprised when the Princes announced their intention of agreeing to come into a federal constitution for India and it changed the whole complexion of the discussions at the conference. The real reason behind the willingness of the Princes to enter the Federation was their desire to throw off the yoke of the Political Department. They thought that if they entered the Federation, they would get away from the irritating meddlesomeness of paramountcy in their affairs. At the same time, they were not prepared to have their political relations transferred to the Federal Government with a majority of British Indians in the legislatures and in the ministry. Therefore, they wanted their relations with the Crown and their treaty rights to remain outside the purview of the Federal Government. This was an inconsistent position.

The Conference appointed several committees, Federal Structure Committee, Services Committee, Minorities Committee etc., and they made their reports and the conference adjourned.

At the conclusion of the First Round Table Conference Mr. MacDonald, the Prime Minister of England, speaking in the House of Commons on December 2, 1931 said :—

> "Having had the majority, the Government is charged with the duty of conducting negotiations, and these negotiations had to be carried on from Parliament to Parliament. This is the method of Government, and here, regarding India, the Cabinet must carry on these negotiations, until a point is reached when a proposed agreement is initialled—a very well-known stage in the negotiations of treaties. When the parties to the negotiations initial it, then at that point, the House of Commons is asked whether it agrees or whether it disagrees. If it agrees, that is all right. If it disagrees I think most Governments would regard the disagreement as a vote of no-confidence, and would take steps accordingly."

That shows that the whole basis of the conference plan was that the new constitution was to be framed by agreement between India and England in the same manner as the Constitutions of Dominions were framed.

SECOND ROUND TABLE CONFERENCE MR. GANDHI ATTENDS

On January 19, 1931, the Prime Minister announced the policy and intentions of His Majesty's Government in regard to the future constitution of India in the following terms :

> "The view of His Majesty's Government is that responsibility for the Government of India should be placed upon the legislatures, central and provincial, with such provision as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by the minorities to protect their political liberties and rights.

> "In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be the primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government."

After this, Lord Irwin on January 25, made the following statement whereby the members of the Working Committee of the Congress were unconditionally released for the purpose of effecting peaceful conditions for consideration of the proposals of the British Government.

> "In order to provide opportunity for consideration of the statement made by the Prime Minister on January 19, my Government have thought it right that members of the Working Committee of the All-India Congress should enjoy full liberty of discussion between themselves and with those who have acted as members of the Committee since January 1, 1930.
>
> "In accordance with this decision and with this object, and in order that there may be no legal bar to any meeting they may wish to hold, the notification declaring the Committee to be an unlawful Association under the Criminal Law Amendment Act will be withdrawn by all Local Governments and action will be taken for the release of Mr. Gandhi and others who are now members of the Committee or who have acted as such, since January 1, 1930.
>
> "My Government will impose no conditions on these releases because we feel that the best hope of restoration of peaceful conditions lies in discussion being conducted by those concerned under the terms of unconditional liberty. Our action has been taken in pursuance of a sincere desire to assist the creation of such peaceful conditions as would enable the Government to implement the undertaking given by the Prime Min-

ister that if civil quiet were proclaimed and assured the Government would not be backward in response.

"I am content to trust those who will be affected by our decision to act in the same spirit as inspires it. And I am confident that they will recognise the importance of securing for those grave issues calm and dispassionate examination."

After their release, the Congress Working Committee met at Allahabad on February 13, 1931 and authorised Mr. Gandhi to seek an interview with the Viceroy and negotiate with him. Mr. Gandhi had several interviews with the Viceroy in February. In the result, an agreement was arrived at between Lord Irwin and Mr. Gandhi. By this agreement, the Congress abandoned and withdrew the civil disobedience movement and agreed to go to the Second Round Table Conference on the basis that Federation was an essential part as also were Indian responsibility and reservations and safeguards in the interests of India, for such matters as, defence, external affairs, the position of minorities, the financial credit of India, and the discharge of existing obligations of the public debt. It is important to note that Mr. Gandhi agreed to these reservations and safeguards.

Lord Irwin retired in April 1931 and Lord Willingdon succeeded him. Differences arose between Government and Mr. Gandhi as regards the interpretation of the pact between Irwin and Gandhi and in consequence, Gandhi declared that he would not go to the Round Table Conference. Further negotiations were started and Mr. Gandhi went to Simla. The differences were patched up for the moment and Mr. Gandhi sailed for London on August 29, 1931.

While in 1930, when there were no commitments, the Congress at the behest of Mr. Gandhi declined to go to the Round Table Conference, in 1931 Mr. Gandhi by his agreement with Irwin accepted Federation and reservations and

safeguards. This time, as on the first occasion, Government were willing to give 14 seats at the Conference to the Congress. Several friends urged on Mr. Gandhi that he should accept this offer and take with him half a dozen Nationalist Muslims so that at the Conference the reactionary Muslim voice could be counterbalanced. Mr. Gandhi, however, declined to follow this advice and constituted himself the sole representative of the Congress.

By the time, the Indian delegates reached London, the whole atmosphere in Britain had altered. The Labour Government was replaced by a Coalition Government. Though MacDonald remained the Premier, a strong Conservative element headed by Baldwin came into the Cabinet and Wedgwood Benn was replaced by Sir Samuel Hoare as Secretary of State for India. The change in the atmosphere was quite visible when the Conference met.

Mr. Gandhi had put up in the East End with Muriel Lester but there was a flat taken in the West End where prominent Indian delegates were meeting very often and Mr. Gandhi used to be there. Myself, Sapru, Jayakar, Sastri and Cowasji Jehangir used often to attend. At these meetings, Mr. Gandhi used to sit on the floor surrounded by his immediate followers squatting with him on the floor. While we were discussing various matters, Mr. Gandhi used to have with him a spinning wheel and used to go on spinning. One day, my patience was much taxed and I said: "Mr. Gandhi, we are now discussing a very important question and can't you leave aside for a moment your spinning wheel and devote undivided attention to what we are considering?" He said: "if it pleases you I would do so" and he put aside the spinning wheel for a while but took it up again. On another occasion when he said something which betrayed want of knowledge of the bearings of the question that was being discussed, I asked him whether he had ever read the Government of India Act of 1919. He said he had not! Then I put to him "If so, how do you

consider yourself competent to express an opinion on the present question the consideration of which requires knowledge of the existing law?" He turned to me and completely disarmed me by saying in all humility in Gujarati to the following effect "As an elder brother you have the right to rebuke me and it is my duty to accept the rebuke."

MR. GANDHI & PROVINCIAL AUTONOMY

Mr. Gandhi in his speech at Mr. Lindsay's drawing room at Balliol College, Oxford, intimated to the Prime Minister that he (Mr. Gandhi) might be willing to see the introduction of provincial autonomy as a first measure, if within six months of its introduction, the way was prepared for responsibility at the Centre. This pronouncement suited very well some of the British delegates who were advocating provincial autonomy as a first step and were not in favour of immediate central responsibility. When Mr. Gandhi's above statement became known to the Indian delegates, some of them immediately saw Mr. Gandhi and pointed out to him the futility of such a scheme. After considerable discussion, he agreed and the following letter dated November 6, 1931 was sent to the Prime Minister and was published in the London *Times* on November 8, 1931.

> Dear Prime Minister,
>
> It is with deep concern that we hear rumours to the effect that provincial autonomy will be introduced as a first step in the political reconstruction of India. leaving federation and responsibility at the Centre to follow later. We have read the statement to the contrary which appeared in the daily press this morning. The rumours, however, are so strong and persistent that we must ask leave to place our views before you beyond the possibility of doubt. The needs of the present situation can be met only by a complete and comprehensive scheme, of which responsibility at the Federal Centre must be as integral a part as the auto-

nomy of the federating units. To divide the scheme into parts and bring into immediate operation one of the parts and postpone the other is to arouse fears of uncertainty and suspicions of the intentions of the Government.

"We realize the importance of the minorities question, of which no satisfactory solution has yet been found. But at the same time we desire to express our clear opinion that it must not be allowed to block the way of a full and comprehensive scheme of responsible Government, which alone can provide an adequate settlement of a pressing problem."

The letter was signed by Mr. Gandhi, Pandit Malaviya, Sir Tej Bahadur Sapru, Mr. Srinivasa Sastri, myself, Mr. Jayakar, Sir Cowasji Jehangir, Sir Purshottamdas Thakordas, Sir Pheroze Sethna, Mrs. Naidu, Dewan Bahadur Ramaswamy Mudaliar, Mr. Rangaswamy Iyengar, Dr. S. K. Datta, Mr. Birla, Mrs. Subbarayan, Sirdar Ujjal Singh, Sirdar Sampuran Singh, Raja Narendra Nath, Mr. Jammal Muhammad, Dr. Moonje, Mr. Shiva Rao, Diwan Bahadur Ramchandra Rao, Mr. Giri, Mr. Joshi, Mr. Barooah, Mr. Jadhav, The Maharaja of Darbhanga and Mr. Tambe.

Mr. MacDonald asked Jayakar what he was to do if Mr. Gandhi makes one statement on a Saturday and makes a contrary statement on the following Monday. Jayakar gave a good reply when he said: "If a man makes two inconsistent statements, you must accept the later as the correct one".

ROUND TABLE CONFERENCE AND MINORITY PROBLEM

When the Minorities Committee met on September 28, 1931, Mr. Gandhi said that he was in negotiation with the Aga Khan and other Muslim delegates and that the Committee should be adjourned pending those negotiations. At the next meeting, a further adjournment was agreed to on the ground that the negotiations were still going on. When

the Committee assembled again on October 8, Mr. Gandhi said that "it is with deep regret and deeper humiliation he had to announce that the negotiations had fallen through" and he suggested that the Committee should adjourn *sine die.* There was considerable discussion on this proposal in the course of which Ambedkar said as follows:

> "The Mahatma has been always claiming that the Congress stands for the depressed classes and that the Congress represents depressed classes more than I or my colleagues can do. To that claim, I can only say that it is one of the many false claims which irresponsible people keep on making although the persons concerned with regard to these claims have been invariably denying them."

At the adjourned meeting held on November 13, MacDonald announced that he had the previous night received a deputation representing the Muslims, Depressed classes, a section of the Indian Christians, the Anglo-Indians and the British community which presented a document embodying an agreement that they had come to amongst themselves. The Aga Khan then formally presented the document to the committee. During the course of a prolonged discussion, Mr. Gandhi characterised the document as one not designed to achieve Responsible Government but was undoubtedly a scheme designed to share power with the bureaucracy. He added: " if that is the intention—and it is the intention running through the whole of that document—I wish them well and the Congress is entirely out of it. The Congress will wander, no matter how many years, in the wilderness rather than lend itself to a proposal under which the hardy tree of freedom and responsible government can never grow."

Before the Minorities Committee I presented a note, in which I said :—

> **" As regards the first question—namely separate versus joint electorates—the question has been discuss-**

ed threadbare both here and in India. It is obvious that in the Provinces where the Muslims are in a minority their coming into the joint electorates is more in their interest and for their protection. Once effective safeguards are provided, in the matter of religion, culture, personal laws, social practices, education, fair share in the public services, adequate representation in the legislature, there is no clash or divergence of interest between the different communities, and it is really safer for minorities to come into the joint electorate. Unless the Moslem voters have a voice in the election of the majority community members, the former would have no hold on the latter. This has been recognised by important Muslim leaders such as H. H. The Aga Khan, Mr. Jinnah, and others, and if they are given reservation of seats, they will be quite secure."

I further suggested that there was no reason why Muslims who were willing to go on the general register and vote in the joint electorates should be forced to go on the communal Muslim register. In this connection I said :—

> " There is one aspect of joint and separate electorates which I earnestly wish to be considered. I believe there are among the Muslims an appreciable number who prefer joint electorates. There is no reason why those preferring to be in the joint electorates should be denied their liberty of thought and action because the majority of their community wish to have separate electorates. It should be made permissible for members of any community for whom separate electorates are provided to declare their desire to go on the joint electorate register. On such declaration they should be included in the joint register and should be allowed to vote and stand for election in the joint electorate ; but such declaration when made, must ever afterwards be final."

In saying this I merely advocated the principle of self-determination about which we hear so much at present. Why are individual members of the Muslim community to be denied self-determination ?

At that time Mr. Jinnah was quite in agreement with this idea. He himself had felt for a considerable time that he would, if allowed, prefer to stand for election to the legislature from the general electorate. In those days, if he had been allowed to stand through the general electorates, he would undoubtedly have been returned by a large majority while in separate Muslim electorates those who were communalists had better chances than nationalist Muslims.

At this Conference, I came in contact with Mahomed Zafrulla Khan and was much struck by his clear-headed grasp of the bearings of the questions under discussion and his independence in expressing his opinions on them. In subsequent years he has fulfilled my expectations about him. He succeeded Sir Fazli Hussein as Member of the Viceroy's Executive Council and later was appointed a Judge of the Federal Court. He has on several occasions been sent on important deplomatic missions to represent India.

I sailed from Marseilles about the middle of December and arrived in Bombay on January 1, 1932. After leaving Aden, I got ill on board and by the time I landed in Bombay, I had developed pneumonia. I went through a severe illness and was practically confined to bed for three months.

During the absence of Mr. Gandhi in England, a storm was gathering in the United Provinces and also in the N. W. F. Province. In the latter, Khan Abdul Gaffer Khan who was known as the Frontier Gandhi and his brother Dr. Khan Saheb had organised Khudai Khidmatgars and were challenging the authority of Government. In the United Provinces, the agrarian trouble had developed and a few

days before Mr. Gandhi landed in Bombay, Pandit Jawaharlal Nehru had started a no-tax campaign and had been arrested along with Dr. Sherwani. Ordinances were promulgated by the Bengal and U.P. Governments.

It was in this tense atmosphere that Gandhi landed in Bombay on December 28, 1931. Telegraphic communications passed between Gandhi and the Viceroy regarding what had happened during Gandhi's absence. Gandhi asked for an interview with the Viceroy. His Excellency made it clear that he would be willing to see Gandhi if, as he hoped, the latter had no personal share in responsibility for, or approved of, the Congress activities, but emphasised that he would not be prepared to discuss the measures which it had been found necessary to take. In reply Gandhi stated that he could not repudiate his colleagues in advance and threatened to resort to civil disobedience. A meeting of the Congress Working Committee was thereupon held and they sent a telegram on January 1 to the Viceroy making various demands and further resolved that in the event of Government not accepting those demands, the Working Committee would call the country to resume civil disobedience including non-payment of taxes. Gandhi was thereupon arrested.

About this time, a sensation was caused by the publication in a Calcutta paper of the text of a report alleged to have been made by Sir Edward Benthall (the present Transport Member of the Government of India) to the Associated Chambers of Commerce which revealed the working of the minds of British statesmen then in power and European interests in India. It showed that the right wing of the British Government had made up their minds to break up the conference and to fight the Congress. It further showed that Europeans in India only wanted such changes as would make administration more efficient and not democratic reforms.

The following passages from the report are illustrative:

"The Muslims were a solid and enthusiastic team. Ali Imam, the Nationalist Muslim, caused no division. They played their cards with great skill throughout; they promised us support and they gave it in full measure. In return they asked us that we should not forget their economic plight in Bengal and we should " without pampering them" do what we can to find places for them in European firms so that they may get a chance to improve their material position and the general standing of their community."

" On the whole, there was one policy of the British Nation and the British Community in India, and that was to make up our minds on a national policy and to stick to it. But after the general elections, the right wing of the Government made up its mind to break up the conference and to fight the conference and to fight the Congress. The Muslims who do not want responsibility at the Centre, were delighted. Government undoubtedly changed their policy and tried to get away with provincial autonomy, with a promise of central reforms. We had made up our minds that the fight with the Congress was inevitable, we felt and said that the sooner it came the better, but we made up our minds that for a crushing success we should have all possible friends on our side. The Muslims were alright; the Minorities Pact and Government's general attitude ensured that. So were the Princes and Minorities."

" The important thing to us seemed to be to carry the Hindu in the street as represented by such people as Sapru, Jayakar, Patro and others. If we could not get them to fight the Congress, we could at least ensure that they would not back the Congress, and that, by one simple method of leaving no doubt in their minds that there was to be no going back on the Federal Scheme which broadly was also the accepted policy

of the European Community, and we acted accordingly."

"The Muslims have become firm allies of the Europeans. They are very much satisfied with their own position and are prepared to work with us."

"It must not, however, be supposed that when we agree that reforms are necessary, we advocate democratic reform in every province. All that we mean is such change in the system of Government as will improve its efficiency."

THE COMMUNAL AWARD

In London Mr. Gandhi was determinedly against giving reservation of seats to the Depressed Classes in the general electorate. When Cowasji Jehangir and other friends pressed Mr. Gandhi to accept this solution, he strongly protested and said "Before you agree to this solution, you had better cut my throat." As the communal question could not be settled by agreement between Hindus, Muslims and Depressed Classes, the Prime Minister offered to give a decision of temporary validity, if he were requested to do so by every member of the Minorities Committee signing an agreement to pledge himself to support his decision so as to enable the constitution to be put into operation, further efforts for an all-India settlement being pursued in the meantime. No such agreement signed by all members was forthcoming. In his final statement to the Second Round Table Conference Mr. MacDonald said:

"If you cannot present us with a settlement acceptable to all parties as the foundations upon which to build, in that event His Majesty's Government would be compelled to apply a provisional scheme, for they are determined that even this disability shall not be permitted to be a bar to progress. This would mean that His Majesty's Government would have to settle for you, not only your problems of representation but

also to decide as wisely and justly as possible what checks and balances the constitution is to contain to protect minorities from an unrestricted and tyrannical use of the democratic principle expressing itself solely through majority power :".

On August 17, 1932, Mr. Ramsay MacDonald announced the decision of His Majesty's Government about the communal problem whereby the Muslims were given certain weightages in the Central and Provincial Legislatures.

As regards the Depressed Classes they were to elect a certain number of members in the legislatures in a separate electorate of their own and they were also at liberty to put forward their candidates in the general electorate. On this announcement being made, Mr. Gandhi in his letter of 18th August to the Prime Minister intimated that he (Gandhi) would fast unto death from September 28, 1932, 12 noon unless, the Award was modified according to his wishes. Obviously the Prime Minister could not alter the award except by the consent of all parties concerned.

Pandit Malaviya convened a conference of all parties in Bombay on September 19. At that conference, it was decided to send a deputation consisting of Sir Tej Bahadur Sapru, Mr. Jayakar, Mr. Rajagopalachariar, Mr. Rajendra Prasad and Mr. G. D. Birla to see Gandhi at Poona. They went to Poona and arrived at a settlement whereby the Depressed Classes instead of having separate electorates were to get a certain number of reserved seats in the general elections. In the second place, they were to elect by themselves four candidates for each reserved seat, the general electorate being confined in its subsequent choice to one of those four.

In the Communal Award, Depressed Classes were given 71 seats in all provincial legislatures put together, out of which not more than 10 were given in Bengal. In the settlement arrived at Poona under the threat of

Gandhi fasting unto death, separate electorates for Depressed Classes were abandoned but the total number of seats in the whole of India given to them by the award was raised from 71 to 148 out of which 30 were given in Bengal as against the maximum number of 10 to which they were limited under the Award. As regards the Central Legislature, 18 per cent of the total number of seats in the Federal Legislature were given to the Depressed Classes with a similar arrangement about primary and secondary elections. These disproportionate concessions had to be made to secure the consent of Ambedkar to the alteration of the Communal Award. This settlement was arrived at on the fifth day of the fast and was communicated to the Prime Minister.

Thus, while Gandhi in London refused absolutely to agree to reservation of seats for the Depressed Classes on the ground that there should be no separation between the Hindus and the Depressed Classes, in Poona he conceded not only reservation of seats but also separate primary elections, and gave them a larger number of seats than they would have been satisfied with in London. Further, in increasing the number of seats for the Deprssed Classes, he gave them 30 seats in Bengal instead of 10 which has always been felt as a great grievance by Hindus in Bengal.

SIR SAMUEL HOARE'S CHANGE OF PLAN

In the early part of 1932, the British Government sent out to India three committees (1) The Franchise Committee (2) The Federal Finance Committee and (3) The States Enquiry Committee:

On the June 27, 1932 Sir Samuel Hoare made a statement in the House of Commons and the text of that statement was simultaneously published in India by the Governor-General. This statement envisaged a complete change of plan. The essential features of the new proposals were :—

(1) There will be a single Bill which will provide alike for autonomous constitution of provinces and for a federation of provinces and states :

(2) His Majesty's Government will proceed to give some time this summer a decision on those aspects of the communal problem which now retard progress :

(3) The Consultative Committee which was appointed by His Majesty's Government will reassemble and will proceed continuously with its programme of work bringing its collective advice to bear on the numerous and important questions entrusted to it, many of which were not examined by the Conference or its Committees in London :

(4) After the conclusion of the work of the Consultative Committee, but before the introduction of the Bill, a Joint Select Committee of Parliament will be set up to consider proposals of Government and thus Government propose to facilitate Indian co-operation and ensure its effective influence at the formative stage :

(5) If the course of the discussion in the Consultative Committee proves that the matter will not be ripe for formulating definite proposals for the consideration of a Joint Select Committee without further consultation of a more formal character, then arrangement will be made for the summoning of a body for further discussion in London, the size and personnel of which would be determined with reference to the number and character of subjects requiring further discussion.

STRONG PROTEST IN INDIA

This statement evoked strong protest in India. Sir Tej Bahadur Sapru, Jayakar and Joshi who were members of the Consultative Committee tendered their resignations to the Viceroy. Sir Tej in his letter of resignation said

that the announcement struck him "as a vital departure from the method of the Round Table Conference which attracted so many Indians in 1929 when it was first announced by Lord Irwin." In conclusion he wrote :—

> "After prolonged consideration of all the issues involved I have come to the conclusion that the variation effected in procedure is not one merely of form but of substance. My faith in the method hitherto pursued continues unaffected, but I have no such faith in the new procedure and I therefore feel I cannot any longer usefully serve on the Consultative Committee which has ceased to be the Working Committee of the Round Table Conference, and is now an independent body whose work can no longer come up for final review before the Round Table Conference. I therefore feel it my duty to place my resignation from the Consultative Committee in Your Excellency's hands."

On July 16, 1932, a meeting of some of the Round Table Conference delegates who were available was held in Bombay at which I presided. At the conclusion of the meeting, the following statement over the signatures of Srinivasa Sastri, Sir Tej Bahadur Sapru, M. R. Jayakar, C. Y. Chintamani, Ramchandra Rao, Sir Cowasji Jehangir, Rangaswamy Aiyangar, N. M. Joshi, B. Shiva Rao, B. V. Jadhav, Sir Phiroze Sethna, S. B. Tambe and myself was issued.

> "The abovementioned members of the Round Table Conference having considered with care the announcement made by the Secretary of State in the House of Commons on June 27 and all the statements since made in explanation thereof, including Sir Samuel Hoare's statement on July 7, are constrained to come to the conclusion that the new procedure is entirely different, in substance and spirit, from the conference method as expounded by Lord Irwin in October 1929 and July 1930 and by the Premier in

December 1931. They consider that the new procedure is symptomatic of a new policy and cannot produce, in that event, a constitution at all so satisfactory as that which the conference method was designed to produce. The result is bound to be a great aggravation of the evils of the present situation. It is the considered and emphatic conclusion of the signatories that the maintenance of the conference method is, as it was, an essential condition of their co-operation and suppport."

I was authorised to convey to Sir Tej Bahadur Sapru and M. R. Jayakar full approval of their action in resigning the membership of the Consultative Committee. Various public bodies in India endorsed this protest.

A deadlock was thus created. Even the Madras branch of the European Association urged the Home Government to modify its attitude so that the continuance of the co-operation of the constitutionalists might be possible. On September 5 in opening the autumn session of the Indian Legislative Assembly, His Excellency the Viceroy announced a modification of the attitude of the British Government. He announced that a third Round Table Conference would be held at which a small body of representatives of the States and British India would meet His Majesty's Government in London about the middle of the next year.

INCONVENIENT DELEGATES ELIMINATED

In October 1932, various reports were afloat as to the selection of the British Indian delegates to be invited to the third Round Table Conference and it was understood that some of the prominent delegates belonging to the Liberal Party were to be dropped. On that, I wrote to Lord Willingdon warning him against the possible exclusion of Sastri and Chintamani. I did not say anything about myself. I received a reply from Lord Willingdon as follows :

My dear Setalvad,

The reasons that His Majesty's Government did not wish to nominate Sastri were largely on account of his health and also because they considered that he would find it very difficult to stand the strain of very strenuous work which this Conference was bound to produce. We should all have liked him to have gone, but I am bound to say that one cannot help feeling that there is always a serious risk in his case.

I may tell you confidentially too that I wanted him very much to take on the position of President of the Council of State when Moncriff Smith goes. The appointment might not be for long, but, if he had agreed, he would have been the first Indian to undertake the office and he would have added great dignity to the position. But alas! he has refused and I shall have to look elsewhere. I may also tell you that I put up Chintamani's name but His Majesty's Government preferred others and the final decision is theirs. Indeed as you well know, numbers have had to be kept as low as possible, with the result that my task has been hideously difficult.

Yours sincerely,

23-10-1932. Willingdon.

I rejoined by pointing out that the question whether Sastri for considerations of health should not go to London, should be left to him and should not be decided by Lord Willingdon and Sir Samuel Hoare. I confessed it was inexplicable why they suddenly developed such deep concern for the health of Sastri. As regards Chintamani, I pointed out that he was the official head of the Liberal Party for the year and it would create a very bad impression to omit him. I further pointed out that in spite of the most violent opposition all round, the Liberals stood out for the Conference method and they were about 13 strong

at the previous conferences out of about 70 British Indian Delegates. The following is the text of my letter :—

October 29, 1932.

Dear Lord Willingdon,

I have received your Excellency's letter of the 23rd instant for which many thanks.

As regards Sastri I quite appreciate the solicitude of His Majesty's Government about his health and the consequent unwillingness to subject him to the strain of the heavy work at the Conference. But one feels that the question should not have been determined for him by other people but should appropriately have been left to him for decision. So far as we know he would have been quite willing to undertake the burden. In fact in declining the invitation to preside at the annual session of the Liberal Federation he publicly said that he was conserving his energies for the Round Table Conference.

As regards Chintamani, Your Excellency says that you put up his name but His Majesty's Government preferred others and the final decision is theirs. I am afraid they have not realised the gravity of what they have done by turning down Chintamani's name. He is the official head for the year of the whole Liberal Party in India and besides that as a journalist and public man he is very powerful in the U.P. and the North. Moreover rejecting him is regarded as a calculated slight to the Liberal Party. The Liberal Party has throughout stood for constitutional methods and have, irrespective of popular favour or disfavour, acted by their principles. In 1930 in spite of the most violent public opposition and abuse they stood out for the conference method and they were about 13 strong at both Conferences out of about 70 British Indian delegates. This time they have been virtually excluded and for

what reason? The reactions of this slight are sure to be serious in the party and in the public generally. Unfortunately Government have always weakened the hands of the Moderate Party instead of strengthening them. As Your Excellency says the final decision was that of His Majesty's Government but I may be permitted to say that it is the high duty of Your Excellency's Government to get remedied a blunder of the sort that has been committed, by strong advice, they being not fully conversant of the local conditions. I will advise Your Excellency, if I may, even now to make a strong effort to repair the mischief and insist upon the inclusion of Chintamani. Heavens will not fall if there is one more added to the number. I have frankly explained to you the situation in the hope and expectation that Your Excellency will take suitable action and save the situation.

Yours sincerely,
Chimanlal H. Setalvad.

It was obvious the real reason was that Sir Samuel Hoare and the Tories found Sastri, Chintamani, myself and some others too unyielding for them. They also dropped Jinnah.

THIRD ROUND TABLE CONFERENCE

At all the three conferences, the Indian delegates, rather the British Indian delegates, were insisting upon responsibility at the centre being inaugurated simultaneously with its establishment in the provinces. Sir Tej Bahadur Sapru referred to this at the Third Round Table Conference in the following terms:—

"If we wanted to get on with provincial autonomy the Simon Commission's Report gave us an opportunity. But we did not want provincial autonomy. Therefore from this point of view the question of the date of the Federation is to my mind of the most vital importance. With regard to that I wish to state the

position of some of us as clearly as it is possible for me to do. Our position is that you must fix a date for the inauguration of the Federation as was done in the case of the Dominions of Canada, Australia and South Africa. But before you fix that date I hope you will also fix the date on which the Indian States must formally and authoritatively notify their willingness to come into the Federation. I suggest that the date should not be longer removed than twelve months from the date on which the Act is passed by Parliament. If I am confronted with the position that that date may arrive and the Princes may not have made up their minds by that time to come into the Federation or that things may not be in such complete order as to justify the inauguration of the Federation, then my answer to that is that the Federation must be made to function all the same leaving it open to Their Highnesses to come as and when they please. I am quite alive to the danger of fixing a date, but surely it should not be beyond British statesmanship to devise a formula to meet a contingency of that character. Therefore I suggest that if you find that there are any valid reasons which may prevent you from giving effect to that proposal and bringing the Federation into operation on that particular date you should reserve to yourselves the power of extending that date, provided of course that extension is not too prolonged. Frankly I visualise the Federation coming into operation in working order in 1935 at the latest. I am not looking upon the Federation as a possibility or a probability in 1938 or 1940. That is my view with regard to it, but if you should find that this is impossible then speaking for myself—and I hope I am speaking for everyone on this side—I say that it would be a most dangerous thing for you to start the new constitution in the provinces and leave the centre unaltered. I say that because of constitutional and administrative grounds I

hold that it would be impossible for the responsible provinces to work in harmony with an autocratic central government. Besides I suggest to you that the constitutions of the provinces have a direct relation to the new constitution which you are contemplating at the centre as it is at present moment. That was the vital condition which you imposed upon the responsibility in British India in 1930 and which you repeated in 1931."

Sapru's insistence upon the inauguration of Federation with the least possible delay after the establishment of the new constitution in the provinces, was very wise. Sapru wanted Federation and Central responsibility at the centre by 1935. In 1945 we are as far away from them as ever.

Sir Samuel Hoare made an authoritative statement indicating the probable outline of the future constitution which was to be placed before Parliament. It was felt that a constitution merely tinkering with the real problem but making no satisfactory advance towards Dominion Status would not satisfy the legitimate aspirations of the Indian people. On the 14th, 15th and 16th of January, 1933, meetings of prominent leaders of all shades of political opinion were held in Bombay at which I presided. Jayakar who had attended the third Round Table Conference was present at these meetings and explained the implications of what had happened at the Conference. On the 19th of January, 1933, a statement was issued signed by about one hundred people prominent among them being Sir Sivaswamy Aiyer, Srinivas Sastri, Sir Govindrao Pradhan, Sir M. Visvesvaraya, Sir Chunilal V. Mehta, Sir Homi Mody, Sir Lallubhai Samaldas, Sir Homi Mehta, C. Y. Chintamani, Sir Currimbhoy Ibrahim, B. V. Jadhav, N. C. Kelkar, Sardar Sant Singh, Malik Barkat Ali, Govindlal Shivlal Motilal, Dr. M. D. D. Gilder, T. C. Goswami M. C. Chagla, Sir Phiroze Sethna and Mathuradas Vissonji to the effect that the contemplated constitution must fulfil the following minimum conditions:

(1) Full and unfettered responsible government in the provinces.

(2) Central responsibility which term is to include control of the purse, right of the Indian Legislatures to determine the economic policy including the regulation of exchange, currency, industrial and commercial matters and an increasing share of responsibility and control in connection with the Defence and Military.

(3) Central responsibility to be introduced simultaneously with provincial autonomy.

(4) Safeguards to be only for a fixed transitory period and to be demonstratively in the interests of India.

WHITE PAPER

In March 1933, the British Government formulated their proposals for Indian constitutional reforms in the form of a White Paper presented to the Houses of Parliament. Soon after the publication of the White Paper, a meeting was held in Bombay over which I presided, as a result of which a statement was issued signed by among others, Sir Govindrao Pradhan, M. C. Chagla, Sir Homi Mody, Jehangir Petit, Manu Subedar, Govindlal S. Motilal, Sir M. Visvesvaraya, Chunilal B. Mehta, Mathuradas Vissonji, Rustom Masani, Dr. M. D. D. Gilder and myself. The statement pointed out that the British Government had shown no keenness about establishing Federation and introducing central responsibility and criticised in detail the various proposals made in the White Paper.

A Joint Parliamentary Committee of both Houses was appointed to consider those proposals. Arrangements were made for an Indian delegation representing British India and Indian States to appear before the Joint Parliamentary Committee.

DEMANDS OF INDIAN DELEGATION REFUSED.

The delegation was to take part in examining witnesses and to put its views before the Parliamentary Committee. At the end of the deliberations of the Joint Parliamentary Committee, all the British Indian Delegates who were still in England headed by the Aga Khan presented a joint memorandum insisting that certain proposals contained therein should be incorporated in the legislation to be introduced in Parliament. These proposals were of a very modest character but not a single one was accepted by the Joint Parliamentary Committee.

The demand made by the Indian delegates that the preamble of the Act should contain the statement that the goal of political evolution of India was Dominion Status was also not accepted. It was said that the preamble of the Act of 1919 was quite sufficient and the unusual course was adopted of repealing the whole of the Act of 1919 except only the preamble and having no preamble at all in the Act of 1935.

FETTERS ON INDIAN LEGISLATURE

The Act of 1935 is disfigured by very stringent provisions safeguarding British commercial interests. The Indian Legislature is prohibited from passing any discriminatory legislation against British trading and shipping incorporated companies and firms operating in India. In order to make a show of fairness it is provided that the prohibition so enacted would cease to operate if discriminatory restrictions were in the future imposed by the British Legislatures on Indian trading and shipping interests operating in Great Britain. On the face of it, this reciprocity provision is altogether unmeaning as no Indian trading or shipping company will be able for many many years, if at all, to operate in Great Britain. Recently, the question about these safeguards for British interests was raised in the Indian Legislative Assembly on a resolution moved by Manu Subedar that all sections providing

these safeguards should be repealed and the resolution was carried, government remaining neutral.

FEDERATION SABOTAGED

The Act was passed in August 1935. As already stated the British Government, as then constituted, were not anxious and enthusiastic about introducing central responsibility. The desire of the Princes too to have an Indian Federation had cooled down. The Congress refused to accept the new constitution and demanded a Constituent Assembly to frame the constitution. All these cross-currents resulted in drift, and Federation which Sir Tej Bahadur Sapru was anxious to have introduced in 1935 is still hanging fire. The Government of India, if they had so wished, could easily have brought the Princes into line at an early date but they themselves not being keen about bringing into being the Federation wasted two years and more in negotiating with each individual State for coming into the Federation. The Congress, if it had accepted the Act of 1935, unsatisfactory though it was and had pressed for the early inauguration of the Federation, things might have been different.

NEW ELECTIONS

The elections in British India to the various provincial legislatures took place in the early part of 1937. The Congress election manifesto in one part stated that the purpose of sending Congressmen to the legislatures under the Act of 1935 was not "to co-operate in any way with the Act but to combat it and seek to end it." In another part, it stated what steps Congress legislators would take to ameliorate the condition of the people.

In the Provinces, though the Congress secured a majority they refused to take office unless they were satisfied that the Governors would not use their powers of interference or set aside the advice of the Ministers. At this juncture, Sir Stafford Cripps at a public meeting in Eng-

land advised the Congress Party to refuse to accept office because "there is no greater danger to the Congress Party then getting entangled with the imperialist machinery of Government." On the Congress refusal to accept office in the provinces in which they commanded a majority in the legislatures interim ministries of persons belonging to other groups were formed. This arrangement was unworkable because whenever the Legislative Assembly was summoned a vote of no-confidence in the ministry was sure to be carried.

Ultimately on June 21, 1937 the Viceroy gave the following assurance:

> "There is no foundation for any suggestion that a Governor is free, or is entitled or would have the power to interfere with the day-to-day administration of a province outside the limited range of the responsibilities resting on him. These special responsibilities are restricted in scope to the narrowest limits possible. Even so limited as they are, a Governor will at all times be concerned to carry his Ministers with him; while in other spheres in the field of their ministerial responsibilities, it is mandatory on a Governor to be guided by the advice of his Ministers, even though for whatever reasons he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice."

On this assurance the Working Committee of the Congress resolved to permit Congressmen to take office but made it clear that "office is to be accepted and utilised for the purpose of working in accordance with the lines laid down in the Congress Manifesto" and "to further in every possible way the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other." Accordingly in July 1937 Congress ministries were formed in six provinces.

CONGRESS ADMINISTRATION

When Provincial Autonomy was inaugurated and the Congress Party agreed to take office in various provinces, high hopes were entertained in the minds of the public that responsible governments would usher in a period of good government and contentment of the people, and parties differing in political persuation from the Congress also wished them well.

In forming the ministry in Bombay the Congress pretended to provide for minority representation. For that purpose they made a Muslim member of the Assembly sign the Congress pledge on one day and made him Minister the next day. This was indeed a travesty of Muslim representation as that Muslim Minister had not the confidence of the 22 Muslim League members of the Bombay Legislative Assembly.

The high hopes raised by the advent of a responsible government were, however, frustrated by the creation of the High Command of the Congress to control and direct the ministries in the provinces in the work of administration. This step by making the ministries responsible to an outside *coterie* and not to the members of the legislatures and the electorate, struck at the very foundation of democratic government and deprived the ministries largely of initiative and reliance on their own judgment. The rapid growth of this Fascist tendency was naturally viewed with great apprehension as being detrimental to the healthy growth of Parliamentary Government and these apprehensions have come true.

It may be truly said that at the end of 27 months the confidence of the public in the government of the Congress Party in Bombay was very much shaken. In their overzeal to produce a new heaven and a new earth in the shortest time possible and driven by the pressure of the High Command, the Bombay Cabinet rushed through the legislature, one enactment after another, in such a hurry that

they themselves did not realise the full implications of what they were doing and the public had hardly any breathing time to digest and make their comments on such legislative proposals. In some cases, bills were introduced and immediately referred to Select Committees with instructions to report within a few days and the Bills became enactments before anybody had time to realise what had happened. During the period of 27 months, the Congress Ministry put on the Statute Book 56 enactments. They appointed no less than 26 committes to deal with a variety of problems.

This wild craze of reforming and overhauling everything soon developed the mentality in the Ministers and the Congress Block in the Assembly of resenting all opposition and treating it with scorn and contempt. Persons honestly opposing their views were practically regarded as enemies and treated as such. Their expropriatory measures like the Bombay Tenancy Act and the Money Lenders' Bill framed without proper and sufficient enquiry have dislocated the credit structure on which the agriculturists and small traders depended for their finance.

While they enacted legislation in such indecent haste they deliberately avoided carrying out the reform of the separation of the executive and judicial functions which had been advocated from Congress platforms for over half a century and which was urgently needed. The Congress Governments obviously desired to continue to retain, like the previous bureaucratic government, control over the judiciary in the provinces.

The civil liberties of the people were encroached upon and Section 144 of the Criminal Procedure Code and the Criminal Law Amendment Act and the Press Emergency Act which the Congress had condemned and had pledged to abrogate when they came into power, were freely used by the Bombay Cabinet. A notable instance of encroachment on the liberty of the Press was the order under Sec-

tion 144, Criminal Procedure Code on a newspaper in Bombay which was set aside by the High Court. On August 1, 1939, a procession of Muslims headed by Sir Currimbhoy Ebrahim was taken out in certain parts of the city of Bombay as a protest against the Urban Immovable Property Tax. Rioting took place while the procession was passing through a certain quarter. On that very day, the Bombay Government had organised a procession in celebration of their prohibition policy. The Chief Presidency Magistrate issued an order on the proprietor and editor of *Jame Jamshed* under section 144 of the Criminal Procedure Code, to abstain for a period of two months from publishing any news, articles or comments relating to (1) the said riot or any other riot and (2) any agitation or protest against the Immovable Property Tax, unless such news, articles or comments had been previously approved by the Public Relations Officer to the Government of Bombay. The High Court set aside the said order and the Chief Justice observed: "*Prima facie* in a country which enjoys the liberty of the press, the applicant is entitled in his newspaper to publish any news or make any comments which he chooses provided that he does not impinge any provisions of law. To prevent any protest against the Property Tax and to prevent publication of news relating not only to a particular riot but to any future riots which may take place was not justified." The Chief Justice strongly objected to that part of the order which required the editor to submit to the Public Relations Officer any such news or comments before publication and to publish the same only if he approved of them.

The Chief Justice referred to the fact that this Public Relations Officer had under instructions from government issued orders to all government officers including Judges of the High Court and other judicial officers to join in the procession the Government had organised in celebration of the inauguration of the prohibition policy. The Chief Justice after observing that it was within his knowledge

that certain judges of the High Court had received the order said: "I must confess that a public officer who knows so little about constitutional propriety as to imagine that judges can be ordered by himself or anybody else to take part in any political demonstrations, is not one on whose discretion a magistrate can safely rely."

They further undermined the independence of the Press by giving substantial subsidies to certain newspapers thereby securing artificial support to their prohibition policy.

Their policy of hasty introduction of complete prohibition in the city of Bombay and the suburbs met with severe public condemnation. This policy involved the throwing away of substantial revenue and the imposition of heavy taxation in total disregard of sound cannons of finance and resulted in widespread unemployment and economic distress. They failed to implement their promises to mitigate the distress caused by such unemployment.

The Congress organisation soon began to develop fascist tendency and when Congressmen assumed offices in the provinces, their fascism became all-pervading. I got only the other day confirmation of this from a prominent member of the Congress. When I met him, we talked about the political deadlock and in the course of that conversation, I said that the Congress committed the greatest blunder in resigning office in the provinces. He said, he welcomed those resignations and the reason he gave for his view was very illuminating. He said that the Congress organisation had become fascist and this tendency had exhibited itself in the working of the ministries and he considered that it was time they went out of office; otherwise he was apprehensive about what would happen as the result of this growing fascist tendency.

CONGRESS AND THE WAR

The war clouds were gathering in Europe early in 1939. Attempts were made by Britain and France to avoid a conflict and they made various concessions to Germany. Not satisfied with this, Germany attacked Poland and thereupon England declared war on Germany on September 3, 1939. Soon after this Mr. Gandhi had an interview with the Viceroy on September 5. In a statement which Mr. Gandhi issued soon after his return from the Viceregal Lodge, he informed the public that he had told the Viceroy that his own sympathies were with England and France from the purely humanitarian stand-point and that he had told His Excellency that he could not contemplate without being stirred to the very depth, the destruction of London which had hitherto been regarded as impregnable. He further stated that as he was picturing before the Viceroy the Houses of Parliament and the Westminister Abbey and their possible destruction, he broke down. In an article to the press later, Mr. Gandhi wrote: "I am not just now thinking of India's deliverance. It will come, but what will it be worth if England and France fall, or if they come out victorious over Germany ruined and humbled?' The Viceroy had also consultations with Mr. Jinnah.

Pandit Nehru who hurried back from China on September 8, declared that the Congress was not out to bargain. He said: "We do not approach the problem with a view to taking advantage of Britain's difficulties. In a conflict between democracy and freedom on the one side and Fascism and agression on the other, our sympathies must inevitably lie on the side of democracy... I should like India to play her full part and throw all her resources into the struggle for a new order."

If Gandhi and Pandit Nehru had stuck to their view of giving unconditional support to Britain in the War and had carried the Congress with them, all the unfortunate happenings that followed their departure from their first re-

action would have been avoided and India would have come much nearer to the attainment of self-government.

The Working Committee of the Congress met on September 15 and discussed the war situation at length and took the gravest view of the Viceroy's proclamation of war and the promulgation of war ordinances, all without the country's consent. The Committee invited the British Government to declare in unequivocal terms what their war aims were in regard to democracy and imperialism and the new order that was envisaged, in particular how these aims were going to be applied to India. Mr. Gandhi who pleaded for unconditional support to England in the War could not pursuade the Committee to accept his view. "I was sorry to find myself alone" he said "in thinking that whatever support was to be given to the British, should be given unconditionally." Later, he changed his view perhaps due to pursuation from his colleagues and acquiesced in the Committee's decision. He then argued that as the Congress was a non-violent body by virtue of its constitution, its support to the war could have been purely moral.

The All-India Congress Committee met on October 10 and passed a resolution stating that "India must be declared an independent nation and present application must be given to this status to the largest possible extent." About this time myself, Messrs. V. D. Savarkar, N. C. Kelkar, Jamnadas Mehta, Dr. B. R. Ambedkar, Sir Cowasji Jehangir, Sir Vithal Chandavarkar met and considered the implications of the interviews which both Gandhi and Jinnah had with the Viceroy. In a lengthy statement which we issued to the press, we warned the Viceroy "not to be misled into accepting the position enunciated by Mr. Gandhi or to regard the Congress and the Muslim League as representing the whole or even the bulk of India and thereby prevent the establishment of true and healthy democracy in this country." We further pointed out that "any constitution or administrative arrangement arrived

at between the Government and the Congress and the Muslim League only cannot and will not bind the Indian people."

The Viceroy then sent for over 50 prominent persons representing all shades of political opinion and sought their advice and assistance and on October 17, issued a comprehensive statement in which he said that by declaring war with Germany, Britain sought no material advantage for herself but desired the establishment of a better system and a real and lasting peace. To associate Indian public opinion with the prosecution of the war, he proposed to establish a consultative group "representative of all major political parties in British India and of the Indian Princes." The Working Committee of the Congress met and rejected this offer and called upon the Congress ministries in the seven provinces, to tender their resignations and by November 15, all Congress ministries went out of office.

On October 26, Sir Samuel Hoare, the Secretary of State for India said in Parliament that the possibility of expanding the Executive Council to include more representative Indians might be considered. The Working Committee of the Congress which met at Allahabad on November 19, reaffirmed its policy of non-co-operation and refused to co-operate in the war effort unless India was declared independent and the practicable maximum self-government was conceded at once.

In January 1940, the Viceroy issued a statement defining British policy to the effect that India would attain Dominion Status of the Westminster Statute variety, after the war, and in the meantime as an immediate step, his Executive Council would be expanded by the inclusion of some of the Indian party leaders. The Congress which met at Ramgrah on March 19, passed a resolution that it could not in any way directly or indirectly be party to the war. In June, the Congress Committee again met and as Gandhi expressed the opinion that India should not maintain any

armed forces "to defend her freedom against external aggression and internal disorder," they parted company with him and resolved to absolve him from responsibility for the programme and activity which the Congress had to pursue viz: "the parallel organisation of self-defence and the maintenance of public security throughout the country by Congress on their own account." This resolution was confirmed by the All-India Congress Committee at Poona towards the end of July 1940. Later, the Committee met again and offered to throw its full weight into the efforts for the effective organisation of the defence of the country provided an unequivocal declaration of immediate independence for India and a national government at the centre was constituted as a transitional measure.

A few weeks later, on August 8, 1940, the British Government made a new offer which was popularly known as the "August offer." Its main points were as follows:—

(1) Indian self-government implied intercommunal agreement since the British Government could not transfer full power to an Indian Government whose authority was denied by any powerful section of Indian opinion.

(2) For the framing of a new constitution after the war, Indians should be primarily responsible.

(3) Meantime it was hoped that all parties would cooperate in the war effort and thus pave the way for India's attainment of free and equal partnership in the British Commonwealth.

These proposals were rejected by the Congress Executive and the Congress reverted to the leadership of Gandhi who after vainly soliciting permission to preach openly against participation in the war effort, launched a non-violent civil disobedience movement under his personal control.

Efforts were made by non-party leaders to bring about a compromise and Sir Tej Bahadur Sapru and his friends convened a Non-Party Conference in Bombay to suggest a way out.

The Viceroy expanded his Executive Council in July 1941 and brought the number to twelve, eight of whom were Indians and a National Defence Council was set up to promote the war effort. The Congress carried on its *Satyagraha* but it did not excite much public interest.

THE CRIPPS OFFER

In March 1942, the British Government sent out Sir Stafford Cripps with certain proposals which envisaged the formation of an Indian Union with full Dominion Status after the war and pending the war, the formation of a national government representative of the main elements of Indian life but such government was to be responsible to the Viceroy and not to the legislature and that Defence would remain in the hands of the Commander-in-Chief. It conceded to the provincial units forming the proposed Indian Union the liberty to secede from the Federation on certain conditions being fulfilled. Difficulties arose about the defence portfolio during the war. A compromise was, however, arrived at on that issue by a division of functions between the Defence Member and the Commander-in-Chief during the pendency of the war. Prolonged negotiations between Cripps and Congress leaders went on for many days but ultimately, they broke down on the question of the Governor-General's veto. When the Congress rejected the offer, Muslim League followed suit.

A deputation from the Indian Liberal Party consisting of the President Sir Benjoy Prasad Singh Roy, myself and the Secretary met Sir Stafford at Delhi and presented to him a memorandum on behalf of the Party.

Many leading Congressmen now regret the fatal mistake committed in rejecting the Cripps offer. In rejecting

the Cripps offer, the Congress did the greatest disservice to the country. If a national government had been formed at the centre, India would have got an effective voice in post-war settlement of the world and her economic and other interests would have been properly safeguarded. India would then have been represented at San Fransisco by her trusted and responsible leaders who could have spoken with authority.

QUIT INDIA

In July 1942, the Working Committee of the Congress passed what is popularly called the "Quit India" resolution. The All-India Congress Committee confirmed the same on August 8, 1942. Gandhi described this resolution as an "open rebellion." This was immediately followed by the arrest of Gandhi and other members of the Working Committee. This led to widespread disturbances in the country involving large-scale destruction of property and the deaths of many innocent persons by sabotage of railways. The Government of India issued a statement saying that the disturbances were wholly and solely the result of Congress "Quit India" resolution which Gandhi flatly denied. He carried on correspondence with the Government of India while in prison. Getting no redress from them, he undertook a 21 days' fast in February 1943. Three Indian members of the Executive Council of the Viceroy, Mody, Sarkar and Aney resigned their seats as the Government were not prepared to release Gandhi unconditionally.

As owing to the fast, Gandhi's health deteriorated and apprehensions were entertained about his life, Government released him on May 6, 1944. After his release, the correspondence between him and Lord Linlithgow was published in the press. Considerable controversy arose as to the responsibility of the Congress for the sabotage and acts of violence that took place after the incarceration of the Congress leaders. Even fully conceding that the Congress leaders did not intend and did not in any manner

instigate the violence that followed on the Quit India resolution and the arrests, the Congress cannot escape responsibility for the happenings inasmuch as in the past, violence had always broken out whenever non-co-operation and civil disobedience were declared and the Congress leaders therefore ought to have known by experience that the same thing would happen on this occasion.

Gandhi after his release said that the authority given to him by the All-India Congress Committee to undertake civil disobedience had lapsed owing to his having been imprisoned, instead of frankly saying that he was prepared to advise the Congress to withdraw the Quit India resolution. Government on their part declined to afford facilities to Gandhi to get into touch with the members of the Working Committee in detention at Ahmednagar but insisted upon the withdrawal of the August '42 resolution. Though Gandhi's word would have been accepted by all Congress leaders, he was perfectly right in saying that he himself could not withdraw the August 1942 resolution unless he had consultations with the Working Committee. Government in insisting on the withdrawal of the resolution without making it possible for Gandhi and the Working Committee to meet laid themselves open to the charge that they did not want a settlement.

GANDHI-JINNAH CONVERSATIONS

It appears that Rajagopalachari had discussed with Gandhi while he was in detention at the Aga Khan's palace, the question of communal settlement and had perusaded him to agree to the principle of Pakistan. The unfortunate part was that Gandhi and Rajagopalachari agreed to the principle of Pakistan without realising its full implications as contemplated by Jinnah. Ultimately, Gandhi and Jinnah met for several days in Bombay. Before the meetings between Jinnah and Gandhi took place, I wrote a letter to Gandhi fully putting before him the dangers of Pakistan to the whole country and urging him

not to agree to any formula which involved a division of India. I received a reply from Gandhi in general terms that he would not do anything against the interests of the country but he ignored the points that I had raised.

I also wrote to Jinnah pointing out the dangers of Pakistan as contemplated by him to the whole country and also to the Muslims themselves and saying that I would welcome any settlement that would fully safeguard the interests of Muslims, but would not involve the partition of the country. The only answer I got from Jinnah was that Pakistan and Hindustan was the only solution he could agree to.

The Gandhi-Jinnah interviews lasted for a fortnight and when the correspondence between them was published, it was very apparent that from the beginning to the end, their views were so divergent that any agreement was out of the question.

THE SIMLA CONFERENCE

Lord Wavell went to England on March 21, 1945 to discuss with the British Cabinet the political deadlock in India and its possible solution. It is said that he was encouraged to go to England by what has since been called the Desai-Liaquat formula which was placed before him. The formula so far as it is known provided parity of representation between the Congress and the Muslim League in the Central Executive Council. When the formula was openly referred to in the press, Liaquat on the floor of the Assembly categorically denied that he had agreed to any formula with Desai and said that the story about his having come to any understanding whatever with Desai was a fabrication. Jinnah also gave a flat denial to the story. In a recent statement of Liaquat to the press he admits that he initialled one copy of the formula and gave it to Desai and

that he (Liaquat) kept with him a copy initialled by Desai. He however says that there was no pact between him and Desai and that the formula represented only his own personal opinion. There is no magic in the word pact. If Liaquat and Desai both personally approved of the formula it amounts to an agreement between them as to the desirability of arriving at a settlement on the basis of the formula though such agreement may not bind the League or the Congress.

After the return of Lord Wavell subsequent to his consultation with the British Government, a White Paper was issued to Parliament and simultaneously an announcement was made in India by Lord Wavell of proposals to end the political deadlock in the country. The proposals envisaged that the members of the Executive Council of the Governor-General would be all Indians with the exception of the Viceroy and the Commander-in-Chief and stated that such Council was to function under the existing constitution of 1935. It was made clear that one of the main functions of the interim Government would be to prosecute the War against Japan with the utmost energy.

The proposed new Council was to represent the main communities and would include equal proportions of "Caste Hindus" and "Moslems" while giving some further seats to other important minorities like the Sikhs, Scheduled classes, etc. It was further made clear in this announcement that the changes suggested would in no way prejudice the essential form of the future permanent constitution or constitutions for India. The Wavell plan, it will be seen, altered the parity between the Congress and the League under the Desai-Liaquat formula to parity between Caste Hindus and Muslims.

Objection was raised in certain quarters to the use of the expression "Caste Hindus." This objection was, however, met by using the expression "Hindus except the Scheduled Classes" instead of "Caste Hindus." This made

absolutely no difference in the substance of the proposal except that it satisfied the scruples of those who did not want the differentiation between Caste Hindus and the Depressed Classes to be emphasised.

The fundamental basis of these proposals, resting as it did on religious and communal division was wrong and irretrievably prejudiced the advent of genuine democracy in India. Evidently both the Congress and the Muslim League accepted these proposals as the basis of discussions at the Conference at Simla. To agree to go into the Conference on the basis of these proposals was indeed a great climb-down for the Congress that had withdrawn the ministries because the declaration of War against Germany by India was made without Indian consent and had passed the "Quit India" resolution of 1942. The climb-down, however, was wise and was welcomed.

It was naturally expected that both the Congress and the Muslim League would insist upon parity between members selected from the Muslim League and those selected from the Congress. If that had been the formula Mr. Jinnah would have been perfectly right in asking that the Muslim quota should comprise only nominees of the League and the Congress would have been justified in including some nationalist Muslims in their quota. The change in the formula was made because admittedly there were Muslims outside the League and Hindus outside the Congress. By the acceptance of Lord Wavell's formula of parity between Muslims and Hindus it was not open to Mr. Jinnah to insist that the whole Muslim quota should consist of Muslims Leaguers. Nor was it open to the Congress to nominate in their quota any Muslims. When the conference started the various groups of invitees were asked to submit their panels of names for nomination as members of the Executive Council and Lord Wavell was to select the required number from such panels and submit them for the final approval of the invitees. It appears that the Con-

gress group at one time suggested that in the names to be submitted by the Muslim League should be included one or two Muslims who were not members of the League. This suggestion was, however, dropped. It is said that Lord Wavell found himself unable to accept the claim of Jinnah and the Muslim League to represent all Muslims of India and thefefore made it clear to Jinnah that he would not take the entire Muslim quota from the panel to be submitted by Jinnah but would include in the Muslim quota at least one Muslim who was outside the League.

The position thus taken up by Lord Wavell cannot be considered unreasonable, for evidently there are other Muslim organisations outside the League. The Premier of the North-West Frontier Province is a Congress Muslim and the Prime Minister of the Punjab is outside the League. The impasse thus created could possibly have been resolved if the Congress had offered to include one or two nationalist Muslims in their quota allowing Jinnah to name all Muslim Leaguers for his quota. It is more than doubtful whether Jinnah would have accepted such a solution in view of his claim that the League is the sole representative of all Muslems of India and that therefore no Muslim outside the League could be taken. One feels however that the Congress would have been true to its avowed traditions if the Congress invitees had made this gesture, more especially when Mr. Gandhi had on various occasions said that he would not mind the governance of India being handed over to Moslems and that all that Congress wanted was that the British authority should disappear from this country. Still one appreciates that the Congress could not venture to take the above course because of the fear of displeasing the Hindus.

After the failure of the Simla Conference, Jinnah in the press statement that he issued has considerably altered his position. He there says that he and the Muslim League cannot consider or enter into any provisional *interim* government unless a declaration is made by the British Gov-

ernment guaranteeing and pledging that after the war, the British Government would establish Pakistan. He further says that although Wavell's proposals were without prejudice to the Pakistan issue, the plan contradicted this by its very terms. He also says that the parity between Muslims and Hindus (except the Scheduled Classes) is no parity for the representatives of the Scheduled Classes, Sikhs, etc. will almost certainly vote with the Hindu Members. There must therefore be some arrangement by which this can be prevented for the veto of the Viceroy cannot be an effective safeguard. According to him, the Wavell proposals set at naught both the requirements. If this is the real view of Jinnah, he should never have agreed to participation of the League in the Simla Conference.

FRESH BRITISH PROPOSALS

Wavell went again to England for consultation with the British Cabinet and on the 19th of September he as well as the British Prime Minister broadcast a new scheme for the attainment of full self-government by India. Immediately after the elections to the Provincial and Central Legislatures the holding of which has been announced, and the formation of ministries in the Provinces, the Viceroy will undertake discussions with the representatives of the legislative assemblies in the Provinces to ascertain whether the proposals contained in the 1942 declaration are acceptable or whether some alternative or modified scheme is preferable. Discussions will also be undertaken with the representatives of Indian States with a view to ascertain in what way they can best take their part in the Constitution making body that will be set up. In the meantime His Majesty's Government will proceed to the consideration of the content of the treaty which will have to be concluded between Britain and India. During these preparatory stages, as soon as the provincial elections are over steps will be taken to bring into being an executive council at the centre which will have the support of the main Indian parties.

All this is well and good but how is an agreed constitution to be evolved and how is India to take over with fundamental political differences between the two major communities. Jinnah's only reaction to the new proposals is reiteration of his demand for partition of India. The issue of Pakistan must be first decided by pursuading the Muslim League to abandon the idea by offer of satisfactory safeguards and removing their apprehensions.

LONG TERM VIEW

It is essential also to take a long term view. If parties are to be rigid and based on religion they will always remain as they are. Unless political parties are based and formed on principles and programmes you can never get real democracy functioning in this country. Therefore, some method must be devised whereby even at some distant date it might become possible to build up parties based on principles and programmes. This can be accomplished, however slowly, by for instance, giving persons who are in separate electorates the option of going into the general register by a voluntary declaration. There is no reason why they should not be allowed to exercise self-determination in this respect. In a note submitted at the Second Round Table Conference I had made this suggestion.

CONGRESS ATTITUDE

The All India Congress Committee held its Sessions in Bombay on September 21, 22 and 23, 1945 and pronounced the new proposals announced by Lord Wavell to be inadequate and unsatisfactory and rejected them and said that only full and complete independence will be acceptable to the Congress and India. They, however, decided to contest the forthcoming elections to the legislatures. The elections however are not going to solve the deadlock. Unless confidence is restored between the two major communities by arriving at some workable compromise, the future of India is fraught with grave danger.

ZAFRULLA KHAN'S SOLUTION AND WARNING

The working out of these new proposals will take some years even if a settlement between the various parties and interests is arrived at. In this connection, Sir Mahamad Zafrulla Khan has recently made very valuable pronouncements. Speaking at the Commonwealth Relations Conference in London on February 17 1945, after reciting the magnificient war effort of India and saying that she had as good as if not a better claim than China to be ranked among the great nations of the world, he said: "Statesmen of the Commonwealth, does it not strike you as an irony of the first magnitude that India should have two and a half million men in the field, fighting and struggling to preserve the liberties of the nations of the Commonwealth, and yet should be suppliant for her own freedom? How long do you think will she be prepared to wait? India is on the march. You may help her or you may hinder her, but none shall stop her. India shall be free within the Commonwealth, if you will let her and accord to her the position that is justly her due, without the Commonwealth, if you will leave her no alternative."

In February, 1945 at a dinner to the conference delegates he made the suggestion that His Majesty's Government should announce that it would be prepared to implement any agreed solution that might be put on behalf of India, within a period of one year and that failing such a settlement His Majesty's Government will place before Parliament itself proposals concerning the future constitution of India, designed to place India on a footing of perfect equality with the Dominions, making it clear that such constitution would be replaced by any agreed constitution that Indians may themselves produce. He ended by saying:

> "Believe me, issues far more momentous and vital to the future of peace and civilisation hang upon a solution of this problem than is perhaps being appreciated at this moment."

THE COMMUNAL PROBLEM

SEPARATE ELECTORATES

Till the Morley-Minto reforms came into operation in the year 1909, there were no separate electorates for any particular community as regards the legislatures or local bodies and there was one common register of persons entitled to vote. In 1906, the Aga Khan led a deputation to Lord Minto, and pleaded for separate electorates for the Muslim Community. In October 1908, Lord Minto's Government sent a despatch to the Secretary of State on the subject of Indian constitutional reforms. In that despatch, Lord Minto recorded that a substantial minimum number of seats in the legislative councils should be filled by election on a territorial basis in which all qualified to vote should take part without distinction of race or creed, and after that, supplementary elections should be held for important minorities and such elections should be confined to members of such minorities.

In January 1909, the late Amir Ali led a deputation to Lord Morley and repeated the demands made by His Highness the Aga Khan in 1906. The deputation also demanded that instead of there being only one Indian Member of the Viceroy's Council, there should be two, one of whom should be a Muslim. The Indian Councils Act of 1909 enacted that the additional members of the Council of the Governor-General and of provincial Governors and Lieutenant Governors, instead of being all nominated, should include members elected in accordance with regulations to be made under the Act. Under the regulations that were framed Muslims were given separate representation in addition to their being allowed to be in the general register and to stand as candidates for election by the general electorate.

In December 1916, the Congress and the Muslim League arrived at an agreement known popularly as the Lucknow Pact. That pact laid down that Muslims should be represented by special electorates in the Councils and the scheme fixed the proportion of such Muslim represen-

tation. Under this scheme, the Muslims were not to participate in the general elections. In arriving at this compromise, the leaders of both communities regarded it as a mere tentative measure and expressed the belief and hope that within a period of 10 years, such confidence would be created between the communities that separate electorates would then be dispensed with.

The question was again considered in the Montagu-Chelmsford Report. The signatories to that report said that although the retention of separate electorates was incompatible with progress towards responsible Government they reluctantly agreed to its continuance as the Muslims prized this arrangement that was made in 1909. They said: "The history of self-government among nations who developed it and spread it throughout the world, is decisively against the admission by the State of any divided allegiance, against the State arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller units than itself." They further said: "A minority which is given special representation owing to its weak and backward state is positively encouraged to settle down with a feeling of satisfied security and that the give and take which is the essence of political life is lacking." They, however, were against communal representation for Muslims in provinces where they formed a majority of the voters. But the Act gave separate electorates in such Provinces also.

In opening the Imperial Legislative Council in September 1918 Lord Chelmsford referring to the report, made it clear that in the opinion of himself and Montagu, communal electorates were to be deprecated. After the Act of 1919, communal representation was introduced in municipal bodies in some provinces viz: Bengal, U.P. and Assam. In Bombay elections to the Municipal Corporation are, however, still held on a general register and not by means of communal electorates. What has taken place in

municipal elections in Bombay all these years shows that it is not necessary to have separate electorates for the minorities and backward communities. The Parsis as well as the Muslims have always been elected to the Corporation in much larger numbers than they could ever have obtained under a system of separate electorates.

In a democratic government, parties should grow and develop with specific political and economic ends in view, so that Hindus and Muslims may combine on political and economic issues to fight another group of Hindus and Muslims who happen to differ from their views. If constituencies are to be earmarked for a particular community or interest, there will be no room left for the growth of purely political organisations which would comprise all communities, all creeds and all conditions of faith. For developing a robust political life, there must be political parties based on conceptions of India's interests and not upon conceptions regarding the well being of any field that is smaller or less comprehensive than the whole of India.

The Act of 1919 perpetuated separate electorates and so did the Act of 1935.

The Act of 1935 lays down the procedure for altering the size, composition or the method of choosing members of the Federal or Provincial Legislatures by Order in Council at any time after consultation with and upon reference to the Governments and Legislatures in India. This provision was embodied in the Act to give effect to what MacDonald said in his Award, "that provisions will be made in the constitution itself to empower the revision of this electoral arrangement and other similar arrangements after ten years with the assent of the communities affected for ascertainment of which suitable means may be devised." The hope underlying MacDonald's recommendation and the provisions in the Act were in the nature of things bound to prove as fruitless as the hope

which those Hindu and Muslim leaders who arrived at the Lucknow Pact in 1916 entertained that separate electorates would, after a lapse of time, be done away with. When once a community or interest is given separate representation it is naturally unwilling to cast away the protection which it imagines is for its benefit and becomes incapable of taking a broad and larger view of the interests of the country as a whole.

Separate electorates for Muslims, I have always maintained, are against the interests of the Muslims themselves in provinces where they are in a small minority. With all the weightage given to them their numbers in the legislatures as compared to the majority community will always be ineffective in those provinces. As the representatives of the majority community have not to seek the suffrage of the minority community, the minority community will have no hold on them. On the contrary, if the majority community candidates had to secure the votes of members of the minority community in order to win a contested election, the minority community would have a hold on them. In provinces where the Muslims are in a majority, they really do not require separate electorates. Separate electorates prevent Muslims from electing to the legislatures a Hindu who by his sympathy with them and his qualifications, they would like to elect in preference to a Muslim candidate. Similarly, the general electorate is prevented from electing a Muslim whom they may prefer to any of the Hindu candidates. For instance had Jinnah, during the days when he stood against separate electorates and was fearlessly fighting for Indian liberty shoulder to shoulder with leaders belonging to other communities, stood for election in the general electorate, he would have been returned at the top of the polls.

PAKISTAN

Jinnah and the Muslim League have now gone far beyond separate electorates and are demanding the divi-

sion of India into Pakistan and Hindustan as separate sovereign states with no Central Government in charge of subjects of common interest to the whole country like defence, customs, communications, etc.

Pakistan, as now defined by its advocates, means that the North-West Frontier Province, Sind, Baluchistan, the Punjab, Bengal and Assam, as they are at present, with only some minor adjustments of boundaries with Hindustan must become Independent Pakistan States. Pakistan is not restricted only to the areas in those provinces where Muslims are in a large majority. Further, these provinces are to become Pakistan provinces without any ascertainment by a plebiscite of the wishes of the people inhabiting those provinces.

If a plebiscite is to be taken at all, it is suggested that this should be confined to the Muslims of those provinces. This means, as regards the Punjab and Bengal, that the non-Muslims forming 48 per cent of the population in the Punjab and 42 per cent of the population in Bengal are to have no voice in the matter of their future destiny. We are not told whether these six provinces are to be independent states or federated under some central authority of their own or how the scheme is to work with the United Provinces and Bihar intervening.

The demand for Pakistan is attempted to be supported on the principle of self-determination. This expression "self-determination" which was first used by President Wilson in connection with the settlement of Europe after the last world war, has been much abused, and a person of Gandhi's intelligence and position should not have allowed himself to be carried away by such a slogan. "Self-determination" sounds very nice, but there are obvious and necessary limitations to it. It may be the self-determination of a person to commit suicide, but the law regards an attempt to give effect to such self-determination as an offence. A Muslim may desire to give away all his wealth to charity or to any person he wishes to benefit but

Muslim law prevents him from exercising his right of self-determination and he can dispose of only a fraction of his property by his will. The prohibition laws in America and India, in the larger interests of society, prevented individuals from exercising their self-determination in favour of taking alcoholic drinks. It follows that the right of self-determination can be allowed to be exercised only if it does not harm or conflict with the well being of other people or of the country as a whole or that of the person or body of persons wishing to exercise it. Therefore, the real question to be determined is whether Pakistan as wanted by the Muslim League is harmful to other interests, to India as a whole or even to the Muslim community itself.

Jinnah in the interview he gave to the correspondent of the *Daily Worker* of London is reported to have said that the North-West Zone consisting of Sind, Baluchistan, Punjab and N.W.F. Province and the Eastern Zone consisting of Bengal and Assam are the homelands of the Muslims. One may well ask why the Punjab is not equally the homeland of its non-Muslim population which forms 48 per cent of the total population? Again why is Bengal not the homeland also of its non-Muslim population which is 42 per cent of the total population of the province? His reason for demanding Pakistan for these two zones is that the Muslims in these six provinces put together are according to him 70 per cent (the census of 1941 shows only 58 per cent) of the total population of these six provinces. This is indeed a curious juggling with figures. By taking an average of the non-muslim population in all the six provinces, the non-muslim population is reduced to 30 per cent while in reality, in the Punjab it is 48 per cent, in Bengal 42 per cent, and in Assam, the non-Muslim population is in a majority. The majority in Assam is by this method of average calculation reduced to a minority of 30. After saying that in these zones the Muslims want to establish their own democratic popular

governments Jinnah maintains that those governments would have the sanction of the mass of the population of Pakistan and that they will function with the will and sanction of the entire body of the people irrespective of caste, creed, or colour. But strangely enough, the non-Muslim population with whose sanction Pakistan is to function is to be put into Pakistan not only without its consent but against its will.

SEPARATE NATIONS THEORY

Then it is argued that Muslims are a separate nation. This theory is really novel and fantastic in view of the fact that over 90 per cent of the present Muslim population in India are descendants of Hindus converted to Islam. In Bombay till only a few years ago, the Khojas and Cutchi Memons were governed by Hindu law as regards inheritance and succession to property and their testamentary powers were as wide as that of a Hindu. Difference of religion does not make different nations, nor does identity of religion make one nation. The Egyptians, Arabs and Persians follow the Islamic religion but they are different nations, so are the French, Germans and Italians, though they are all Christians. In Japan, there are three main religions, Shinto, Buddha, and Christian and millions follow one or other of these three religions but they have not divided their country on the basis of religion. They comprise one Japanese nation. In Canada, you have two nations—the French and British, but they have not divided Canada politically into two sovereign States. In Switzerland, there are three nations, but that country is politically one unit.

DANGERS OF PAKISTAN

Those six provinces are, according to the Muslim League, to be an independent fully sovereign Muslim State or States and there are to be similar Hindu Sovereign States in the south. There is to be no common Central Government over these Muslim and Hindu States to administer subjects of common interests like defence, foreign relations, customs

and communications. The Muslim as well as the Hindu group of States are to have their own army, air-force, fleet etc., and they may enter into treaties and engagements with each other or with foreign countries and powers. The minorities question will not be solved but will be intensified as there will be minorities in both groups, and on any real or supposed grievance of the minority in one group or the other, there is sure to be a conflict between the two groups, thus reproducing conditions under which India will again become the prey of some foreign power.

It is said that the Hindustan and Pakistan States will enter into treaties with each other about matters of common interest, but how are these treaties and engagements to be enforced and observed? The world has had sufficient experience of treaties being treated as scraps of paper. Further, if the northern group does not maintain its defence forces on an efficient basis, the whole country will suffer if an aggressor came from the north. Similarly, if the southern group with its enormously long seaboard did not maintain a proper fleet and air force, the whole country will again be a prey to an aggressor coming from east, south or west.

Turning to the position of Muslims themselves it is not going to be at all comfortable for them in Hindustan provinces. There they are in a very small minority—six per cent, eight per cent and so on—and so they will never have any share, except on sufferance, in the administration, while in the Punjab and Bengal, for instance, where the non-Muslim population is about 48 per cent and 42 per cent respectively, the Muslim majority dare not deny to the other communities a share in the administration. Further, if there is to be Pakistan for Muslims, how is separation to be denied to other communities and interests. The cry of Dravidistan and Harijanistan has already been raised.

On the top of all this what about the Indian States which constitute one-third of India? If the British are to

withdraw altogether and the Hindustan and Pakistan sovereign states are to be fully independent with no central government to control matters of common interest in which the States can have representation, how can the Indian States, or certainly a dozen of the big ones be denied full sovereignty with their own armed forces? In the result, India will be cut up into two dozen or more independent sovereign States with their separate armed forces, foreign policies, customs, tariffs etc. The Balkanisation of India will then be complete and she will attract the avarice of some great power from the east or west and aggression by such power she will never be able to resist.

If the principle of self-determination is to be invoked why is not self-determination to be allowed to those Muslims—and there is an appreciable number of them—who want to go into the general electorates for the provincial and central legislatures? At the Second Round Table Conference, I had suggested that those of the Muslim community and other minority communities who preferred to go into the general electorates should be allowed to do so. If that had been done, not only would the real strength of the separatists have been gauged but as more and more Muslims began to see the advantage of one general electorate, year after year more people from the minority communities would have come into the general electorates so that ultimately the separate electorates might have vanished altogether—an ideal which in my view all who have the real interests of India at heart should cherish.

CONGRESS PARENTAGE OF PAKISTAN

The real parentage of the Pakistan movement can be traced to the Congress who by the wrong way in which they handled the communal question and by their behaviour when they were in power, created the great distrust in the minds of the Muslim community which has driven them to advocate Pakistan. In the beginning, Congress leaders said that there was no communal problem in India

and if there was, it could be settled after India got Independence, forgetting that for the very purpose of getting Independence, communal unity was essential. Then there is the tragic perversity which the Congress displayed when they assumed office under the Act of 1935. When the Congress won at the elections in Bombay they pretended, when forming the ministry, to provide for minority representation. For that purpose, they made a Muslim member of the Assembly sign the Congress pledge on one day and made him minister the next day. This was indeed a travesty of Muslim representation when that Muslim minister had not the confidence of the 22 Muslim League members of the Bombay Legislative Assembly. They dealt unjustly with the Muslim community and made them hostile. As according to their religion, Muslims cannot earn interest, the funds of their charitable trusts are invested in immoveable properties, and they asked that such Trust properties should be exempted from the urban immovable property tax. This very reasonable demand was refused.

RATIONAL SOLUTION

The rational way of solving the communal question is for the present to have coalition governments both in the provinces and at the centre. The provinces should be made as fully autonomous as possible, the centre dealing only with a few subjects of general importance like defence, communications, currency, commerce etc. I would even—though very reluctantly—give residuary powers to the provinces. In provinces where the Muslims are in substantial majority their interests are absolutely safe. In provinces where they are in a minority, coalition governments will afford sufficient protection. The real difficulty is about the Central Government. Some arrangement about the Central Executive and Legislature whereby the Muslims and other minorities might feel assured, should be devised. All these palliative measures should, however, be taken for the purpose of restoring confidence and trust among all classes

with the firm determination that as early as possible, the element of religion should be eliminated from politics and political parties should be formed entirely on programmes and principles.

POLITICAL DEADLOCK

DISTRUST

The root cause of the present deplorable state of things can be summed up in one word "Distrust," distrust between the British and Indians and distrust between the various communities and interests among the Indians. This distrust has resulted from bankruptcy of statesmanship and political wisdom all round.

Taking first the British Government, consider their administration which they are not tired of telling us, is their trusteeship of the Indian people and which they are very loath to give up. What an indictment it is of their administration in India that the literate population of British India is about 10 per cent. When Gokhale brought in a bill for free and compulsory primary education, it was thrown out by the votes of the officials in the Imperial Legislative Council. For over a hundred years and more they held the competitive Indian Civil Service examination in England thus making it almost impossible for Indians to get in in any appreciable number. It was only after continued agitation that examinations are now held simultaneously in India. Instead of encouraging Indian industries, Government imposed the iniquitous Excise Duty on cotton goods manufactured by Indian Mills so that Lancashire goods could sell in India.

See how in recent times they have discouraged the establishment of aircraft and shipbuilding industries sponsored by that industrialist of vision and great powers of organisation, Walchand Hirachand.

See again how for all these years, they toyed with the question of the Indianisation of the Army. In 1917-18, Lord

Rawlinson then Commander-in-Chief, prepared a scheme for the Indianisation of the Army in about 19 years. That scheme, however, was pigeon-holed and nothing was done except to start a Military School at Dehra Dun where about 10 recruits were admitted every year for training. Rawlinson's scheme was not produced before the Skeen Committee. It incidentally came to light at the Round Table Conference. If that Indianisation scheme had been carried out, during the present war, we might have seen Indian Generals fighting the Allies' battles with Wavells, Auchinlecks and Montgomerys. The reason for all this neglect was apparently the distrust of India.

Then recall the enactment of the Rowlatt Act on the eve of the Montagu-Chelmsford Reforms. The unanimous Indian opposition against this bill was brushed aside and this led to the starting of the Civil Disobedience movement and the resultant introduction of Martial Law in the Punjab and the ruthless treatment of the people of that unfortunate province. How in the enactment of the Government of India Act 1935 Indian opinion was flouted and most unreasonable safeguards for British commercial interests were enacted has been referred to in another place. In her whole history Britain has never done the right thing at the right time except on one notable occasion viz. when she conferred full Self-Government on South Africa after winning the Boer War. That is how they lost America and Ireland and have lost the goodwill of India. Lord Listowel said the other day that if India was not propitiated in time, Indo-British relations would be poisoned. The fact is unfortunately that they have been poisoned already by the delaying policy of Britain.

On the Indian side, there has been deplorable want of practical statesmanship and wisdom from 1920 when Mr. Gandhi got control of the Congress to the present day. Every favourable opportunity that presented itself for the political advance of India was not availed of by Congress leaders under the guidance of Gandhi.

How the Congress ministries behaved and lost entirely the confidence of Muslims has been referred to previously. The rejection of the Cripps offer and the passing of the "Quit India" resolution of 1942 were the greatest blunders of the Congress. Mr. Gandhi has accomplished a very big thing in rousing the consciousness of the masses to an extent nobody had done before and I have the highest respect for him but by his unpractical idealism he has failed to gather the fruits of the very forces he has raised.

SAPRU CONFERENCE 1941

In March 1941, a Conference styled the Non-Party Political Conference was held in Bombay for the purpose of passing a resolution that the whole Executive Council of the Governor-General should consist entirely of non-official Indians drawn from important elements in the public life of the country, involving the transfer of all portfolios including Finance and Defence to Indians, with certain reservation as regards defence during the pendency of the war and that a declaration should be made that within a specified time-limit after the conclusion of the war, India would enjoy the same measure of freedom as is enjoyed by Britain and the Dominions. It was urged that the adoption of these measures would enable " the resources of India in men and material to be used to the fullest advantage."

The prime movers in convening this conference were Sir Tej Bahadur Sapru, Dr. Jaykar and Sir Jagdish Prasad. The meeting was held at the Taj Mahal Hotel, Bombay on March 13 and 14, 1941. I and Sir Cowasji Jehangir were invited and were present. While sympathising generally with the object behind this move viz: ending the political deadlock, I was of opinion that the demand made by the proposed resolution was not calculated to achieve the object in view. Therefore, in the speech I made, I exhorted the meeting to be more realistic and pointed out that it was

difficult to understand how the inclusion in the Executive Council of the Governor-General of a dozen Indians, however clever and efficient, but not having the support of the major political parties in the country or of the members of the Legislature, would make the Central Government so representative as to enable "the resources of India in men and material to be used to the fullest advantage." Such an Executive Council would have to meet a hostile legislature and would have to carry on by means of certification. As regards India attaining Dominion Status and as regards the constitution India should have as a dominion, that depended entirely on agreement between all political parties and till such agreement was reached, the deadlock, I affirmed, would continue. I conceded that the country was placed in a very unfortunate position by the extreme attitude taken up by the Congress and the Muslim League but felt that so long as that attitude was there, any proposal to bring into the Executive Council 12 Indians outside these organised bodies would prove absolutely futile.

Some speakers tried to meet this objection by saying that when those 12 members came into power, they would get support and form a party. I pointed out that this was putting things topsy-turvy altogether and that it was fallacious to say "Give us power, make us members of the Executive Council and then we shall get support from the country." I pointed out that besides being impracticable, this idea was not consistent with the self-respect of any one called upon to become a member. I emphasised that the only feasible alternative courses were that those desirous of breaking the deadlock should try (1) to bring the warring elements viz: the Congress and the Muslim League together and/or (2) the conveners of the conference and those who believed in it should form a new strong Centre Party and fight the Congress and the Muslim League and get the support of the country. When I said this, some members interjected that it would take a long time to do what I suggested. We are now in 1945 and if instead of

passing academic resolutions the promoters of the conference had followed one or the other of the two courses indicated by me, there might have been some progress. Eleven Indian members have been now in office for three years and more and still they have not been able to get support in the country or to form a party that can wean people from either the Congress or Muslim League as some speakers fondly hoped.

The conference held its second meeting in July 1941 at Poona. Invitations were issued to all those who attended the Bombay Conference as well as many others but no invitations were issued to me and Sir Cowasji Jehangir and it was stated in the newspapers that Sir Cowasji and myself had not been invited. On that Sir Vithal Chandavarkar who was the President of the Liberal Federation wrote to Sir Jagdish Prasad strongly objecting to the exclusion of persons who had attended the Conference in Bombay simply because they differed as regards the methods to be employed and said that he would not attend if Cowasji and myself were excluded. On this, invitations were sent to me and Sir Cowasji in a very curious form. While in the first sentence, we were invited to the Conference, at the end it was stated that only those who were in favour of the Bombay resolution should attend. On receiving this invitation, I and Sir Cowasji wrote to Sir Jagdish Prasad pointing out the mockery of the invitation and said: "What purports to be an invitation to us to attend the Poona Conference is really a disguised intimation that we are not wanted at Poona."

The third Conference was held at Delhi. As was very clear from the beginning, the efforts made by this conference were ill-advised and futile.

The Sapru Committee was constituted last year to find a solution of the present deadlock and to make proposals for a constitution for India. They published their report in April 1945. The main features of their recommendations are that both in the central legislature and the

central executive, Hindus and Muslims should have parity of representation i.e. 40 per cent each, the remaining 20 per cent representation being distributed among the various other minorities. This recommendation, however, is made conditional on the acceptance by all parties of joint electorates with reservation of seats for Muslims and other groups. Undoubtedly, if the different interests can be made to agree to joint electorates, it would be ideal. Taking, however into account the existing state of things, it is impossible to expect the Muslims to abandon separate electorates. The Committee have also recommended the formation of a constitutent assembly to frame a constitution on the principles indicated by them.

Recently Dr. Ambedkar has evolved a scheme which continues separate electorates but instead of parity of representation to Hindus and Muslims as envisaged in the Sapru Committee's recommendations, gives varying proportions to the various communities concerned in such a manner that no particular interest would be able to override the other groups. While the Sapru Committee stands for joint electorates, Dr. Ambedkar sticks to separate electorates. Dr. Ambedkar's scheme in my opinion, suffers from the want of any device by which ultimately, progressive return to normal representation on non-communal lines may be secured. If separate electorates are to be perpetuated there will never be any chance of real democracy coming into existence. If parties are formed on communal lines, majorities and minorities would be perpetuated as they are at present. If parties are formed on principles and programmes and not on religion then only a minority party may hope to become a majority party by converting the voters to their point of view.

The only method by which ultimately water-tight divisions based on religion may be eliminated is the one that I suggested at the Round Table Conference and which has been already referred to. It was to the effect that any members of the Muslim community who

wanted to go on the general register should be allowed to do so and if they once made their choice, that should be treated as final. There are an appreciable number of Muslims who would prefer to go on the general register and there is no reason why they should be denied self-determination and be compelled to remain in the Muslim communal register against their wishes. By the process I suggested, the chance is kept open for the ultimate abolition of separate electorates and for making it possible for real democracy to function.

POLITICAL PARTIES

The birth and subsequent history of the Indian National Congress has been already dealt with.

MUSLIM LEAGUE

Next to the Congress, the All-India Muslim League is the largest political organisation in India but its membership is confined to the Muslims. Established in 1906 after the arrival of Lord Minto in India, the Muslim League always sought to maintain its existence as a separate political body. Several attempts were made to bring the Congress and the League on one platform or at least to join on major political issues but without success. For the first time in 1915, both the bodies met in Bombay about the same time and formed committees to work in collaboration with each other in connection with the reform scheme which culminated in the famous Congress-League Scheme but after some years, due to dissension among the Muslims themselves, the League became almost moribund. A rival association under the chairmanship of the Aga Khan was started but it faded out. At the time of the appointment of the Simon Commission, the League was revived under the guidance of Mr. Jinnah but as he was committed to the boycott of the Commission, Sir Mahomed Shafi and others organised another League to bolster up

the Commission. It was not until 1937 that the League made its reappearance.

During the later part of 1936 elections to the Provincial Councils under the Government of India Act of 1935 were held and the League under the chairmanship of Mr. Jinnah put forward League candidates in support of the policy and programme of the All-India Muslim League but it could not make any headway even in the Punjab. Congress assumed office in seven provinces and the members of the Muslim League in those seven provinces were entirely left in the cold. The result was that Mr. Jinnah and his colleagues carried on a country-wide campaign to strengthen the League. In 1940 the League at its Lahore Session adopted the now famous resolution on Pakistan.

There are other Muslim Associations like the Majlis, Nationalist Muslim Group, the Shia Conference, the Momin Conference and the like who do not owe allegiance to Mr. Jinnah and his Muslim League but they have not acquired much influence.

HINDU MAHASABHA

The Hindu Maha Sabha which was formed many years ago by Pandit Madan Mohan Malaviya and other prominent Hindus has gained momentum only in recent years and that as a counterpoise to the Muslim League. The main objects of the Mahasabha are the organisation and consolidation of Hindu interests. Although it commands a large following which is of a spectacular kind, it has made no headway so far as elections to the legislature or even local bodies are concerned. In all bye-elections fought by the Congress and the Mahasabha, the seats have been invariably won by the former.

JUSTICE PARTY

The Justice Party of Madras which was founded by the late Dr. T. M. Nair as a non-Brahmin organisation, was in office from 1920 to 1936 when it was wiped out of existence by the Congress Party which contested the elections after

several years. The Party is almost in a moribund condition. Efforts are now being made by Sir A. P. Patro and others to revive the Party.

THE LIBERAL PARTY

November 1918 saw the birth of the Liberal Party in India outside the Congress and this party while preserving its individuality maintained in its work the time-honoured tradition of the Congress itself. The party came to be known as the "National Liberal Federation of India."

Among its founders were some prominent leaders of the Congress like Sir Surendra Nath Bannerji, Sir Sivaswamy Aiyer, Sir Dinshaw Wacha, Sir Narayan Ganesh Chandavarkar, myself, Sir C. Y. Chintamani, Mr. N.. M. Samarth and others. This step on their part was rendered inevitable by the attitude of the Indian National Congress towards the new reforms proposed in the Montagu Chelmsford Report published in July 1918. A special session of the Congress, held in Bombay in August 1918, decided to reject the proposed reforms. It resolved that the proposed reforms were inadequate, unsatisfactory and disappointing. As against this view there were in the Congress, patriots and leaders who felt that the new reforms must be saved for India against the reactionaries in England and rejectionists in India.

The first session was held in Bombay in the Empire Theatre. It was largely attended and Lady Pherozeshah Mehta graced the occasion by her presence. Dinshaw Wacha was Chairman of the Reception Committee, and Surendranath Bannerji was President of the session. Over six-hundred delegates attended from all parts of India, though at that time there was raging a severe epidemic of influenza throughout the country. The Montagu Report had accepted the goal for India as put forward from the Congress platform by Henry Cotton, Gokhale and Dadabbhai Naoroji in its successive sessions at Bombay, Benares and Calcutta in the years 1904, 1905 and 1906 respectively.

The Session emphasised how the proposed reforms constituted a distinct step forward and how they had embodied most of the demands of the Congress formulated for many years. In certain respects they were even better than the proposals embodied in the Congress-League scheme which provided for no element of responsibility either for the Provinces or the Centre. The Congress-League scheme was framed earlier than the famous declaration of August 1917. The new reforms were in line with that declaration and hence the Congress-League scheme had already become out of date.

The reforms put forward by Mr. Montagu enunciated a new principle and envisaged a goal of responsible self-government for India, and therefore the veterans of the Congress thought it would be unwise and suicidal to reject them *in toto*. That was, briefly, the genesis of the formation of the Liberal Party.

The leaders of the old Congress felt that though it was a wrench to them to secede from the parent institution, duty demanded that they should take that step, for they realised that the country was greater than the Congress and that the real principles and policy which the Congress had hitherto followed had a higher claim upon them than continuance in a body which was about to depart from those principles. The session made its position clear in that respect to the whole of India. Before the conference was convened in Bombay, a memorandum was issued on the Montagu-Chelmsford report to show how the report was an improvement on the Congress-League scheme.

The Memorandum was the joint product of nine persons each of whom was a staunch Congressman and all were men well-known in the public life of India. They were Sir Dinshaw Wacha, Sir N. G. Chandavarkar, myself, Sir Bhalchandra Krishna, Sir Hormasji Wadia, Mr. W. A. Chambers, The Hon'ble Mr. Gokuldas Kahandas Parekh, Mr. N. V. Gokhale and Mr. N. M. Samarth. It was the organising genius of Mr. Samarth, the Secretary of the

session, that made the gathering a success, not only in point of numbers but in rallying all sane opinion in the country in favour of the new reforms.

Neither the session nor the memorandum before it had said ditto to everything in the new proposals. The conference criticised the reforms and offered constructive suggestions to improve them especially as regards the Central Government. All the same it firmly maintained that the reform proposals were not unworthy of England to offer and of India to accept as was said by some people. The attitude taken up in 1918 by the Liberals was fully justified by the resolution of the Indian National Congress regarding the reforms at the end of 1919. If the mood of the Congress had continued as it had shown itself at that session, the two wings of the Congress would have coalesced as they had once done in 1915, after a temporary break from 1908-1914.

At the end of 1920, the Congress unfurled the banner of non-co-operation with the Act of 1919 and boycotted the new Legislatures under it. It further announced its policy of civil disobedience which made the separation that might have been only temporary, a permanent one.

From 1920 to 1945 the National Liberal Federation of India has functioned as a separate and distinct political organisation holding the middle position between two extremes—the extreme of reaction and *status quo* as typified by Government and the extreme of unpractical idealism and defiance of authority as typified by the Congress. The Federation and the party it represents stand for free India as much as any other party but it is a body that disapproves of non-co-operation and civil disobedience and direct action. It stands for constitutional action, swears by independence of judgment, and has all along believed and worked for national unity and self-government for the whole of India. It criticises measures and policies on their own merits and demerits without regard for men behind them, and with the sole aim of the good the country before it.

The policy of delay followed by Government and the policy of non-co-operation and totalitarian methods adopted by the Congress have created distrust, division and disunion in the country, and helped bitter communalism to rise and overwhelm the spirit of nationalism and united work throughout the land. The National Liberal Federation of India has stood and striven all along for freedom and unity, for liberty with ordered progress, for unity without surrender by minority to majority and *vice versa*. It is entirely non-communal in its outlook on public questions. It deprecates the mixing up of religion with politics, and it believes that fanaticism in politics is as great a peril to India as fanaticism in religion. Toleration and mutual trust bred by the spirit of co-operation are, in its opinion, the essence of all solid progress. The Federation has done its best to foster this spirit in the public life of India. It has striven its hardest to tackle and solve the communal problem and to bring about union between warring communities and parties. It has never shrunk from the task of co-operation with any party in the country on the principles of wisdom, sobriety and right direction. And, above all, it has been no apologist either for the Government or for any political organisation in the country, when it has been convinced that their policies and methods were detrimental to the cause of India.

That is briefly the story and the record of the National Liberal Federation of India and the party that works under its banner for the last twenty-five years.

The Liberal Party can claim to have stood for right principles and courage of conviction. Its principles have been vindicated, at least thrice, during the period it has functioned, by the Congress returning to the path of sanity and right action in 1924, 1931, and last in 1937, when it abandoned direct action and reverted to constitutional and parliamentary methods of work.

In 1928, I presided over the session of the Liberal Federation which was held at Allahabad. In concluding the proceedings of the session, after referring to the changed conditions of India I said:

> "They (British Government) must realise that a mentality is growing in this country which is absolutely impatient with the present state of things and which, if not guided in the proper channel, if not met in a reasonable manner, will swallow everything. The communistic ideals and socialism are the coming menace. If that mentality grows, it will swallow dominion status, it will swallow independence, it will swallow the present structure of society, it will swallow the British connection, and it will also swallow the British trade of which Britain is naturally so anxious. Let them, therefore, take heed in time. The only way of meeting the impatient idealism that is growing in the rising generation and preventing the spread of socialism and communism is for the authorities if they have any imagination in them to take a bold step, to take courage in their hands and to concede at once what we have been asking for viz: Dominion Status."

I again presided over the Calcutta session held in December 1937. In my presidential address, I sounded a note of warning regarding the lamentable growth of Fascism in the Congress organisation which was inconsistent with the proper functioning of democratic government. I said:

> "The Ministries are in an unenviable position between two forces. One is the tendency on the part of those in high command to centralise authority and turn the Congress Ministries in the Provinces to mere instruments of carrying out the dictates of the High Command. It is a grievous mistake for the Working Committee to claim to examine and pronounce upon the individual acts of administration of the ministries

in the various provinces. The Committee should only confine itself to laying down broad general principles of the party and leave the Ministers free in their administrative acts."

"Unfortunately a wrong constitutional principle appears to have been laid down by the present President of the Congress. He asserts that the ministries are not directly responsible to the electorate but their responsibility is to the Congress and only indirectly through the Congress to the electorate. If this proposition is accepted, there is grave danger of fascism developing in the Congress organisaion. Not only would the Ministers but all members of the Congress will lose their independence of judgment. The Right Hon'ble Srinivasa Sastri in a recent pronouncement referred in his inimitable language to this danger. He deprecated party politics which would do away with independence of judgment and compel people to speak, act and vote at some one else's bidding. He pointed out that the High Command of the Congress was developing into a dictatorial body resenting all criticism from not only outsiders but from their own rank and file. This inculcation of herd mentality among even the intelligentsia of the country is regrettable."

The Liberal Party is functioning true to its principles and will, I am confident, continue to do so.

PART 7

POLITICAL MISCELLANY

7. - - POLITICAL MISCELLANY

RACIAL AND COLOUR DISCRIMINATION

IN my early days, I had observed in Ahmedabad and other places how Indian visitors calling on the Collector and the District Judge who were Europeans, had to alight from their carriages at the gate and then walk in the compound to reach the bungalow, while the carriages of European visitors drove up to the porch. Such discrimination was felt by Indians as insulting but they had to put up with it. When I settled down in Bombay as a legal practitioner, I found that such racial discrimination was very marked in the social life of Bombay. In European Clubs like the Byculla, Bombay, and the Yacht and the Bombay Gymkhana, not only was membership restricted to Europeans but even the European members were not allowed to bring in Indian guests for lunch or dinner. The European wives of Indians had access to one or other of these clubs but their husbands had to wait in their carriages outside the gates of the Clubs to take their wives home. The same ban against Indians I learnt also existed in European Clubs in Calcutta and other places.

Curiously enough, all the servants in these Clubs were Indians but the members were averse to the presence of Indian gentlemen in their precincts. One can well understand a club restricting its membership to a particular community but it is sheer colour prejudice when a club will not allow its own European member to invite into the Club Indian friends whatever their position in life. Inverarity for many years resided in the Byculla Club. Indians visiting him for professional business were not allowed to go in by the main entrance or to the public rooms but had to go by a side entrance to Inverarity's room. On this account,

whenever I was asked by any solicitor to have conference with Inverarity on a holiday, I declined to go.

In the Byculla Club, there used to be a rule that members of the Governor's Executive Council were automatically to be admitted as members of the club. When under the Montagu-Chelmsford Reforms one Indian member was added to the Executive Council, the club promptly rescinded the above rule. When Montagu came to Bombay he was entertained by the Byculla Club. Basu, a member of the Secretary of State's Council and a member of the deputation that had come out with Montagu, could not be invited to the Byculla Club. It was thereupon manoeuvred that Basu should receive an invitation for that evening from Chaubal, the Indian Member of the Executive Council of the Governor of Bombay.

With regard to visitors going to Mahabaleshwar, at Panchgani a register was kept where the names of visitors were entered. I was proceeding to Mahabaleshwar in May 1911 in a bus and there were with me other passengers, both Europeans and Indians, and also their servants. At Panchgani, a peon of the municipality came with two books for entering the names of passengers. In one book were to be entered the names and addresses of European passengers. In the second book were to be entered the names and addresses of all Indian visitors, including the Indian servants of Europeans. I protested against this racial discrimination and wrote about it to His Excellency the Governor requesting him to see that such discrimination was not made.

The Private Secretary to the Governor replied saying that "the registers were maintained by local authority and that in His Excellency's opinion it was not necessary to maintain more than one register of all classes of visitors and that this was being communicated to the local authority."

The late Justice Ranade while returning from Madras in 1894 had occupied a lower berth in a first class com-

partment and the other lower berth was occupied by Dr. Bhandarkar. A European civilian Judge during the absence of Ranade on the platform of an intermediate station entered the compartment, threw on the floor Ranade's bedding and occupied his seat. When Ranade returned, he with his usual tolerance did not say anything but when the night came Dr. Bhandarkar had to go to the upper berth and make the lower berth available for Ranade. By the time the train arrived at Poona, the Civilian who had usurped Ranade's berth had come to know who Ranade was. On the Poona platform, he walked up to Ranade presumably to apologise but Ranade with his quiet dignity turned his back on him and walked away. Not to allow the offender the chance of apologising was possibly dictated by the feeling that the real sting of the rudeness was not removed by an expression of repentance which came only after learning that the insulted individual was a Judge of the High Court. The offender later sent a letter to Ranade in which after praising his patience and expressing repentance said "You have taught me a lesson in gentlemanliness."

Once at Ahmedabad Station I entered a first class compartment in the mail train to Bombay and occupied a lower berth. The other lower berth appeared to be already occupied by some other passenger whose baggage was lying in the compartment and his servant was standing at the door. A few minutes before the starting of the train, that passenger, who I afterwards learnt was Giles, then Educational Inspector of the Northern Division, came from the Refreshment Room where evidently he had been taking his dinner. When he saw me in the compartment, he asked his servant to remove his baggage to another compartment which happened to be vacant and he transferred himself there. I can well understand a passenger moving to another compartment if it were vacant but the gesture made when he saw me and the manner in which he ordered his servant to remove his baggage showed that he was

removing himself as he did not like to travel with an Indian. At the next station, I got out of my compartment with my baggage and moved into the compartment where Giles had migrated. He could well have repeated my performance and moyed into the compartment I had vacated but I suppose he did not want to take the trouble. At this distance of time, it seems to me that my action was unnecessarily provocative and even silly but the incident shows how Indians were feeling this colour discrimination.

In old days people used to go to Mahabaleshwar via Wathar on the Southern Maratha Railway. At Wathar station, there were two waiting rooms, one exclusively for first and second class European passengers and another for Indian first and second class passengers. There was considerable agitation against this discrimination and a common waiting room was then provided.

Once I was returning from Mahabaleshwar and came to Wathar to catch the train timed to arrive after midnight. I was accompanied by my clerk. We arrived at the station soon after 9 p.m., bought our tickets (first class for me and second class for the clerk) and spread our beddings in the waiting room and went to sleep. Later two Europeans arrived from Mahabaleshwar. They came into the waiting room and when they found us sleeping there, they shouted at us and enquired whether we had first or second class tickets. I declined to give them any answer. They went to the Station Master and brought him there. He knew me and so he told them that we were first and second class passengers. The two Europeans thereupon went outside the room and stopped there till the arrival of the train. After they brought the Station Master to the waiting room, I conceived the idea of forcing upon them our unwelcome presence. I knew that in those days, there used to be only two first class compartments in that train. I asked my clerk to get his second class ticket changed into first class and told him that when the train arrived, he should occupy one compartment and I should

occupy the other. When the train arrived, we were prompt in carrying out our plan. When the two Europeans found an Indian in each compartment, they came to us and told us both to occupy one compartment and leave the other compartment to them. We answered that we were quite comfortable where we were and had no intention of moving. Then they called the Station Master again to reason with us. We, however, declined to move and by reason of all this discussion, the train was delayed for 20 minutes at the station. In the end, these two Europeans had to put up with the presence of an Indian in the same compartment. What I did on this occasion may again appear silly, but under those circumstances, I could not help behaving as I did.

In a speech before the Bombay Legislative Council in September 1904, Sir James Monteath said :—

> "The place (Mahabaleshwar) was acquired for Europeans as a sanatorium and it has become the head-quarters of Government during the hot weather. So long as Government go there, many officers of Government must find residence there for the performance of their duty. If they were turned out of Mahabaleshwar as completely as they have been, for instance, out of Malabar Hill, Bombay, it would be little short of a public calamity."

When I was a Member of the Executive Council in 1920, Government were to move to Mahabaleshwar in the month of April as was usual in those days. Members of Government and Secretaries were housed as far as possible in certain Government bungalows which were looked after by the Superintendent of Mahabaleshwar. I was allotted a particular bungalow and when this was intimated to the Superintendent he wrote back saying that the bungalow could not be given to me as all those bungalows were always given to European officials. The matter was put before the Governor and he ordered that the bungalow should be given to me.

When I was in Mahabaleshwar I was up against colour discrimination again. Under one of the rules of "The Club" at Mahabaleshwar, a Member of the Executive Council, if he so wished, could become a member of the club without being ballotted for. The Secretary wrote to me inquiring whether I wished to become a member. I asked him to send me a copy of the rules of the club as I knew that there was some discriminatory rule against Indians. When I got a copy of the rules, I found that if a member of the club, whether European or Indian, wished to invite an Indian guest to the club for lunch or dinner, the permission of the managing committee of the club had to be obtained while there was no such restriction with regard to European guests. I thereupon intimated to the secretary that as long as such a rule discriminating against Indians was there, I could not with any self-respect become a member of the club. Thereupon the president of the club had a talk with me and he agreed that the objectionable rule should be rescinded but that it could only be done at the next general meeting of the club and he undertook that at such meeting the rule would be abrogated. On that understanding, I became a member of the club and the rule was subsequently abrogated as agreed.

In the year 1934, on the occasion of the centenary of the Byculla Club, I wrote a letter to *The Times of India* suggesting that the rule against Indians being invited as guests should be abolished. I received letters from some members of the club sympathising with my point of view but they were not able to persuade the other members to agree with them. In November 1935, when it was announced that the Byculla Club would entertain Lord Willingdon at dinner when he would be in Bombay to sail for England on his retirement in April 1936, I published the following open letter to him in the columns of the *The Times of India*.

Your Excellency,

It appears from what the Special Correspondent of *The Times of India* at Delhi says that in April

next when Your Excellency will be in Bombay before sailing for England after laying down your high office, you will dine at the Byculla Club and on that occasion, I presume you will, like your predecessors, pass in review the five years of your administration. May I venture respectfully to request Your Excellency to give careful consideration to the following few lines in this connection? This Club, like the Yacht Club and the Bombay Club, has severely excluded Indians from its precincts. No one complains of any community having its own club and confining its membership to that particular community. But it is ununderstandable why members of any such club should be prohibited from inviting to the club members of any other community as their guests. It is sometimes attempted to defend this exclusiveness by referring to Indian religious and other barriers. Whatever justification those factors may have afforded fifty years ago, it is idle to pretend that at the present day those barriers any longer exist in any degree, in progressive cities like Bombay where these clubs are situated, that may constitute any defence for the race and colour barrier imposed by these clubs. Indians are invited as guests to any of the big clubs in London by their members and are also admitted as members. Indians have had the honour of lunching or dining with His Majesty the King. In their own country, however, they must not be seen within the precincts of European clubs. A member of the Byculla, Yacht or Bombay Club may invite his Indian friends to dine with himself and his family at his own home, but he dare not invite the same Indian friends to one of these clubs. A Judge of the High Court or a Member of the Executive Council is precluded from inviting his Indian brother Judge or Member as his guest to any one of these clubs. I may at once say that Indians are not at all anxious to thrust themselves into places where they are not wanted, nor

will they feel themselves exalted by being allowed within the precincts of those clubs. I wonder why the members of those clubs do not realise that such exclusiveness based on colour or race, savours of race arrogance and stands in the way of a better understanding between Englishmen and Indians, which all of us earnestly desire. All talk of goodwill and equal partnership between England and India becomes meaningless when Indians are regarded as untouchables whose shadow must not be allowed to pollute the sacred precincts of the European clubs. I equally wonder why responsible representatives of the Crown apparently do nothing to discountenance the present obnoxious practice. If Your Excellency has accepted the invitation of the Byculla Club to dinner, you will find that the Indian Members of your Executive Council, who I expect will be in Bombay to receive the new Viceroy, will have no place at the table to hear Your Excellency give an account of your stewardship. I drew attention to this regrettable matter two years ago at the time of the centenary of the Byculla Club, but apparently there has been no change in the existing policy of that or any other European club. I venture to think that the time has arrived when in any event representatives of the Crown like the Viceroy and Governors should openly dissociate themselves from this reprehensible practice. I, therefore, earnestly request Your Excellency to reconsider the position regarding the invitation of the Byculla Club, if you have already accepted it. Your Excellency, I may be permitted to say, has shown great strength and courage in putting down forces of disorder in the country. Is it too much to expect that Your Excellency will have the courage to make it clear to your countrymen that you definitely disapprove of such racial discrimination against Indians by declining to take the hospitality of an institution that tenacious-

ly clings to such discrimination? I am sure that such a gesture on the part of Your Excellency will receive the approbation of some of the saner elements in the European community, for when I publicly referred to this matter at the time of the Byculla Club Centenary, I received letters from several Europeans of standing agreeing with me in condemnation of the ban against Indians. I trust my intervention on this occasion will not be misunderstood by Your Excellency as well as by the European community, among whom I can claim a good many personal friends. The course that I am taking the liberty to suggest to Your Excellency is one that is dictated by the duty you owe to yourself and to your principles and the genuine interest of your country and the British Empire.

CHIMANLAL H. SETALVAD

It was some time after this that the Byculla Club amended its rule enabling its members to invite Indians as guests to the Club. The ban against Indians still obtains in the Bombay Club and the Bombay Gymkhana. While European military officers are allowed the use of these clubs, Indian military officers of the same or higher ranks are not allowed to enter the premises of these clubs.

The intensity of Indian feeling about this race and colour discrimination is reflected in the rules of the Asian Club which is a select Indian Club, that no Britisher is allowed even as a guest in the precincts of the Club.

Some Englishmen themselves bitterly realise the provoking race prejudice prevalent among the members of European community whereby Indians are debarred even from entering the precincts of European Clubs let alone being invited as guests by any members. Sir Claude Hill, a member of the Executive Council of the Governor of Bombay (1912-15) in his reminiscences refers to this race prejudice in the following terms:

"It is unworthy—and to my mind is also a confession of great weakness—to protect ourselves by rules which are inherently offensive not only to Indians but to ourselves. Moreover, such rules are formed on a mistaken assumption. Indians recognise that we are entitled to establish and manage ourselves, for ourselves, our own social clubs. They do not wish to be admitted as members. But, for my own part, I felt it was an affront to me and to my fellow-members of the clubs we belonged to, to fetter our discretion as to the guests we desired to entertain. If that discretion were abused, it would be open to the committee to deal with the offending member.

What Indians have resented, and what has often caused me humiliation is the existence of a rule which permits, say Maharaja X to drive me from the races to my club and drop me there, but which debars me from inviting His Highness to enter the hall of the club and compels him to drive off without alighting."

Further on he says:

"I myself have suffered the humiliation of driving a very distinguished Indian to the portals of the Bombay Yacht Club, where I had a message to deliver to a member, and where I was debarred even from inviting him to wait for me in the hall. It was not he, but I, who had reason to feel insulted by this."

SOME VICEROYS AND GOVERNORS

DURING the long period of my public career I have known several Viceroys and Governors. With some I came into personal contact and as regards others, I was interested in some aspects and measures of their administration.

LORD CURZON

Lord Curzon was a very talented, efficient and hard-working Viceroy and he brought the whole administrative machine to a pitch of efficiency. He was, however, a great Imperialist and always had visions of enlarging the extent and influence of the British Empire. He looked upon India as a great asset for maintaining and extending the domination of Britain over large portions of the earth. The following quotations from his diaries are very significant:

> "The true fulcrum of Asiatic domination seems to me increasingly to lie in Hindustan. The secret of the mastery of the world is, if they only knew it, in the possession of the British people.

He further said:

> "It is only when you get to see and realise what India is—that she is the strength and the greatness of England—it is then only that you feel that every nerve that a man may strain, every energy he may put forward, cannot be devoted for a nobler purpose than keeping tight the chord that holds India to ourselves."

He never thought or dreamt of independent India. In those days, it was said by people that Lord Curzon loved India as one loved his dog, a useful and obedient slave. His great strength of character as a stern administrator was illustrated by the action he took with regard to certain happenings in Burma. An offence of a most revolting

character was perpetrated on a Burmese woman by a British soldier. Military authorities on the spot showed a culpable disposition to hush the matter up and were seconded in their apathy by local court officials. The prosecution of the soldiers concerned broke down on technical grounds although it was plain to every one that acquittal involved a gross miscarriage of justice. With the concurrence of the Commander-in-Chief, Lord Curzon dismissed the cluprits from the army ; high military officers were severely censured and in certain cases relieved of their command; the regiment was banished for two years to Aden and all leave and indulgence were stopped; the civil officers were severely censured and an Order-in-Council was issued in which the "sense of profound horror and repugnance" with which the incident was viewed by government was placed on record and "the negligence and apathy that were displayed in responsible quarter" were reprobated.

Lord Curzon was very fond of pomp and pageant and threw himself enthusiastically in organising the great Durbar in 1903 to solemnise the accession of King Edward VII and he and Lady Curzon rode in state on a lavishly decorated elephant.

One act of Lord Curzon that created acrimonious controversy and the effects of which lasted many years was the partition of Bengal. The agitation against this division of Bengal was continued for many years and although Lord Morley had refused to reconsider the matter, saying that it was a settled fact, it was ultimately unsettled in 1912 when at the Coronation Durbar at Delhi, the announcement was made annulling the partition and the capital of India was shifted from Calcutta to Delhi.

Another measure of Lord Curzon which created very heated controversy was the University Act to which reference has been made elsewhere. Curzon was instrumental in bringing about the appointment of Kitchner as Commander-in-Chief of India against the advice of the members of his Council. He soon found, however, that it was diffi-

cult to get on with Lord Kitchner and an acute controversy arose regarding military administration in which the views of Curzon and Kitchner were diametrically opposed and on the Home Government's accepting the. Kitchner view, Lord Curzon who had been re-appointed, resigned his office in 1905.

Curzon from his Oxford days spoke and behaved with a superior air. This led to various rhymes by his contemporaries at Oxford, one of which stuck to him for life.

> My name is George Nathanial Curzon
> I am a most superior person
> My cheek is pink, my hair is sleek
> I dine at Blenheim, once a week.

One good work that Curzon did for India was the preservation of ancient monuments.

LORD MINTO

Lord Curzon was succeeded by Lord Minto, the grandson of a former Governor-General. It was a stormy heritage to which Lord Minto succeeded for the unrest created by several unhappy measures of Lord Curzon, particularly the partition of Bengal resulted in open violence in places, notably in Bengal. Minto got into a panicky mood and begged Lord Morley who had succeeded Brodrick at the India Office to give him the necessary powers to check inflammatory speeches and writings. Morley with his Liberal traditions at first demurred but due to constant pressure from India, gave Minto the necessary support on the clear understanding that side by side with repressive measures to check seditious tendencies, the work of reforming the administration was to be carried on. The Seditious Meetings Act and the Indian Press Act were passed in the Imperial Legislative Council and concurrently with these measures a scheme of reforms later known as the Morley-Minto reforms were adumbrated. The Legislative Councils were given wider powers and

for the first time, an Indian member was taken into the Executive Council both in the Government of India and in the provinces of Bombay and Madras. On his retirement, Minto was the recipient of a public reception at Bombay when he and Lady Minto were entertained at a Garden Party in the University Gardens.

HARDINGE

Minto was succeeded by Lord Hardinge. He was a permanent official as Under Secretary at the Foreign Office and his appointment was a departure from the usual practice of appointing as Viceroy a prominent person in the public life of England. I came into personal contact with him when I succeeded Mr. Gokhale in the Imperial Legislative Council. He had progressive views about the position of India in the British Commonwealth. He was the first Viceroy who courageously spoke out against the treatment of Indians in South Africa.

At the time of the Delhi Durbar when Lord and Lady Hardinge were going in a procession riding on an elephant, somebody in the huge crowd threw a bomb at him which wounded him rather seriously. When he recovered conciousness, he turned to Sir Guy Fleetwood-Wilson, his Finance Member and said: "Wilson, there should be no going back on our policy about India." On his retirement, the University of Bombay conferred upon him the Hon. Degree of LL.D. at a special Convocation held for the purpose.

CHELMSFORD

Chelmsford was in India as Commander of an English Military Unit stationed at Jutog near Simla one or two years before the retirement of Hardinge. Nobody ever dreamt that he was going to be the next Viceroy. The story goes that sometime before his appointment was announced he was staying at Government House at Bombay for a day or two prior to his sailing for England. At the dinner table somebody sitting next to him, told him

that when in England, it would be good if he tried to come out on the personal staff of the next Viceroy. The day after this, Chelmsford sailed and his appointment as Viceroy was announced the next day. Sir Ali Imam who was Law Member told me the following story. After assumption of office, when he met Ali Imam, he said "Do you remember, one evening, I was sitting in the A.D.C's room and you came in? The A.D.C. introduced me to you and while I was going to talk to you, you said you were already late for an appointment with the Viceroy and excused yourself and went away."

Chelmsford took an active part in the investigations with Montagu about Indian reforms and signed the joint report. However, when the time came for the Government of India to express their opinion on the Montagu-Chelmsford Report, the Government of India in many important particulars, disagreed with that report. Whether Chelmsford was a willing party to that despatch or whether he was over-ruled by his colleagues it is difficult to say.

The enactment of the Rowlatt Act and the happenings in the Punjab during his administration have been referred to in another place. Sir Sankaran Nair who was the only Indian Member of the Executive Council of the Governor-General resigned his seat after the disclosures regarding the Martial Law administration in the Punjab.

Speaking at the Dinner which I gave in honour of the birthday of Jamsaheb Ranjitsingji in London in 1926, Chelmsford referring to me said:

> "It had always been comfort to me during my tenure in India to know that there was in Bombay a man of Sir Chimanlal Setalvad's ability ready and able to discharge any task, however difficult, which might be entrusted to him."

LORD READING

Reading succeeded Lord Chelmsford. He arrived in India in 1921. This was the second time that Reading had

come to India. Many years ago, Rufus Issacs had run away from home and was working as a cabin boy on a steamer and that steamer anchored in the Hoogly. Little did he dream at that time that he would return to India as Viceroy. He had a brilliant career at the bar and became Chief Justice of England.

When Reading landed in Bombay I was among those who received him at the Gateway of India in April 1921. From there we proceeded to the University Convocation Hall where the new Viceroy was sworn in. The Government officials who were in charge of the ceremony evidently forgot that Reading was a Jew and in administering the oath, they gave in his hands a copy of the New Testament. Reading put them wise and asked that a copy of the Old Testament be brought. There was some delay in producing a copy of the Old Testament.

Soon after his appointment, Reading had made several speeches in England in the course of which he had said that while in India, he would do justice to everybody. Mr. Gandhi thereupon issued a statement enjoining people to preserve a calm atmosphere in order to give Reading the opportunity to carry out his object.

Reading gave long interviews to Mr. Gandhi and the Ali Brothers but did not succeed in pursuading them to abandon the civil disobedience movement. Then came the Treaty of Sevres which dismembered Turkey. That created great discontent in India specially among the Muslim population. Reading with the consent of Mr. Montagu issued a statement in remarkably pro-Turkish tone. Lord Curzon who was the Foreign Secretary at the time strongly objected to this and Montagu had to resign.

As member in charge of the Sukkur Barrage scheme, I was deputed by the Bombay Government to see Lord Reading at Simla and arrange for a loan from the Government of India to the Bombay Government for the construction of the Barrage, without interest. I had several inter-

views with him about the matter. At the first interview, I found that his relations with Governor Lloyd were not very friendly. As soon as I mentioned the object of my visit, he said "We are not going to do anything to oblige Lloyd." I put to him that it was not a question of obliging Lloyd but obliging the people of Sind. After the first interview, I wrote to Lloyd and told him that "the great obstacle that I found here was yourself." Ultimately, the Government of India agreed to give the loan but not without interest.

I again met Reading at Simla in a Dancing School which was situated next to the Hotel Cecil. I was taking lessons in dancing and so was he.

LORD IRWIN

Mr. Edward Wood (subsequently Lord Irwin and now Lord Halifax) a grandson of the well-known Secretary of State for India, Sir Charles Wood, was appointed to succeed Reading. It is recorded that an astrologer had told Sir Charles Wood that a grandson of his would become Viceroy of India. He is a devout Christian. He arrived in Bombay on a Good Friday and in deference to his wishes, the official reception was put off till the next day. From Apollo Bunder, he went direct to the Church at Malabar Hill. It was during his regime that Mr. Gandhi undertook his memorable Dandi march. Many people at that time were of opinion that if the march had been stopped at its very inception, the great trouble that arose afterwards could have been averted. It was said at the time that it was Mr. Vitthalbhai Patel (President of the Central Legislative Assembly) who pursuaded him not to take the movement seriously and allow it to spend itself. As it turned out, the result was quite contrary to what Patel represented to Irwin it would be.

When the country-wide boycott of the Simon Commission took place, Lord Irwin and myself had long discussions and considerable correspondence regarding possible mea-

sures to set things right. Irwin was largely responsible for the holding of the Round Table Conferences.

GOVERNORS

SIR RICHARD TEMPLE

My first recollection of a Governor of Bombay is that of Sir Richard Temple. He belonged to the Indian Civil Service and was attached to the Bengal cadre. His was the only instance of a Civil Servant being appointed permanent Presidency Governor. He was considered to be unsympathetic towards Indian aspirations. He retired from the Governorship before completing the usual term in order to stand as a candidate for Parliament. Soon after he left sometime in 1880, the citizens of Bombay held a public meeting in the Town Hall to denounce the administration of Temple and urged voters in his constituency not to support his candidature to the House of Commons. I was present at this meeting.

SIR JAMES FERGUSSON

During the period I was at College, Sir James Fergusson was the Governor of Bombay. In those days, Government House was situated at Parel in the building where the Haffkine Institute is now housed. Lady Fergusson died in that house of cholera and after that the residence of the Governor was shifted to Malabar Hill. Fergusson gave great encouragement to higher education in the presidency, and the Deccan Education Society's college at Poona was established in his time and was named Fergusson College. In his regime, three new Colleges at Kolhapur, Junagadh and Baroda were established. I remember his coming back many years after he retired from the Governorship and he attended a public meeting that was held in the Town Hall. He lost his life in the earthquake that took place at San Francisco.

LORD REAY

Fergusson was succeeded by Lord Reay. Reay was a strong administrator. He made officials realise that they

were servants of the public and not their masters. Any officer not behaving properly with the Indian people was at once pulled up and in some cases publicly censured. His Government had the courage to undertake the prosecution of Arthur Crawford regarding whom there was considerable scandal about the sale of offices. As Chancellor of the Bombay University Lord Reay took considerable interest in University affairs and his Government did their best to help the University. He nominated to the Legislative Council public men like Pherozeshah Mehta, Telang, and Badruddin Tyabji. At the time of his retirement a public meeting was held to record appreciation of his administration and funds were raised to erect a memorial. From the funds was raised the artistic bronze statue of Lord Reay which stands in Church Gate Street.

LORD HARRIS

Harris came to Bombay with a big reputation as a cricketer and he gave a great fillip to that game. It was during his time that Lord Cross's Bill became law and in the Legislative Councils were admitted non-officials recommended by the municipalities in the three divisions of the Presidency.

Pherozeshah Mehta, Javerilal Yajnik and myself entered the Bombay Legislative Council under this new system. In the beginning, Lord Harris as well as his members of Council were a bit impatient with the elected members but later on, they reconciled themselves to the new order of things. The reader will find more about this and my relations with Harris in the part, "Legislatures."

LORD SANDHURST

Sandhurst succeeded Harris. He evidently came to India under some evil star for all sorts of calamities overtook this Presidency during his regime. There was severe famine in Gujerat and plague broke out both in Bombay and Poona. This epidemic was new to India and the autho-

rities did not know what to do about it. Becoming panicky, they took measures which, however, necessary from their point of view, were largely resented by the Indian population and there was great discontent. On the night of June 22, 1897, Mr. Rand and Col. Ayerst who were connected with plague administration, while returning from a banquet at Government House, Poona, were shot by some one on Ganeshkhind Road. The assailant was never traced. The sardars Natu Brothers were arrested and kept under detention under Bombay Regulation XXV of 1827 without trial and without the public being told why they were so detained.

This action of Lord Sandhurst's government did not escape the keen eye of Lord Curzon. There was considerable correspondence between Lord Curzon and Lord Sandhurst which culminated in a definite demand by the former for a statement of the grounds on which the continued detention of Natu Brothers was justified and for Sandhurst's considered opinion on the possibility of their early release. To this letter Sandhurst replied after many months that the subject was constantly before his mind and that he would not forget to keep the Viceroy informed privately as to what course might be expedient for the future. Being annoyed at this evasive reply, Curzon wrote to him on May 26, 1899.

> "Now, I put it to you frankly, is that the sort of answer to enable a Viceroy to form an independent opinion for the purpose of advising the Secretary of State? Is it not tantamount to saying to him, 'It is quite unnecessary to tell you my reason. Nor need you form any of your own. In good time when I decided to act I will let you know?' I conclude from your attitude in the matter that this . . . is your view of the situation and of our relations in connection therewith."

He went on to remind Lord Sandhurst that though he had written to him for information so far back as January

and had continued to press for it ever since, he was still at the end of May " in complete ignorance as to why they are still under surveillance, of what you suspect them, or what you think they would do if accorded full release ;" and he added that the position was one in which " with all respect to yourself and your Government, I must decline to acquiesce."

Tilak was writing strongly in the *Kesari* against Government's plague measures and on their repressive policy generally. Government, therefore, prosecuted Tilak and he was arrested at Bombay. His trial has been referred to already in another chapter. Owing to these happenings, Lord Sandhurst's regime became very unpopular.

According to Sir Claude Hill who was Private Secretary to Lord Sandhurst, superstitious people among the Shia Islamia community, attributed all the misfortunes that overtook this Presidency to the name of Sandhurst when spelt in Urdu. The estimation of luck in a name is based on certain numerical values attached to the letters composing it. Sandhurst who was an enthusiastic attendant at Bombay and Poona race meetings, presented a gold topped whip to Ibrahim who was a winning jockey for several years. After this presentation Ibrahim failed to ride a winner and his friends attributed his ill-luck to his having received the whip at Sandhurst's hands. The Arab owners after prolonged deliberation decided to consult some authority experienced in exorcising evil fortune. The authority, after due reflection, pronounced that it was necessary to bake the jockey Ibrahim in *chapati* (cake of unleavened flour). The trouble was so serious, specially from the point of view of the jockey himself, that Ibrahim consented to the ordeal. He was duly and with all proper ceremonial, built into a mound of flour up to his neck, and as much baking was done as was consistent with the

avoidance of personal injury to the victim. In the following day's first race Ibrahim rode a *dead heat.*

About the time of his retirement, a move was made by certain people to call a public meeting to record appreciation of his administration and to raise a memorial. Sir George Cotton and Bomanji Dinsha Petit were the prime movers in this matter. Dinshaw Wacha, N. V. Gokhale and myself addressed the following letter to them :—

Bombay, December 22, 1899.

Sir George Cotton Kt.,

The Hon'ble Mr. Bomanji Petit,

Dear Sirs,

Your invitation of the 20th instant to hand asking us to attend a meeting which is "to consider what steps should be taken to commemorate the services rendered by H. E. Lord Sandhurst during his tenure of office as Governor of Bombay." As the desirability or otherwise of commemorating His Excellency's services is not open to discussion at the meeting which will apparently be asked to decide upon only the nature of the steps to be taken for such commemoration, we may be permitted to say that no option is left for those who have not made up their minds about the matter but to abstain from the meeting. We do not know who are invited to attend the present meeting but so far as we have been able to make enquiries we find that several gentlemen of position whose opinions on this matter should have been ascertained have received no invitations.

We may in conclusion beg to request that as there is a strong feeling in the native community throughout the Presidency against the movement, the meeting will recognise the desirability of avoiding unpleasantness by not giving the movement a public character. We

further request that you will be good enough to read this letter to the meeting.

Yours faithfully,
C. H. Setalvad,
D. E. Wacha,
N. V. Gokhale.

The result was that the meeting which was at first intended to be described as a public meeting of the citizens of Bombay was turned into a meeting of the friends and admirers of Lord Sandhurst. A fund was raised and a statue of Sandhurst was placed in Church Gate Street.

LORD NORTHCOTE

Northcote who succeeded Sandhurst was the son of Lord Iddesleigh better known in English politics as Sir Stafford Northcote. He was kind and pleasant but looked an insignificant sleepy person with no initiative. The story ran that an old friend of his came out to India and was staying with him at Government House and the two friends were keeping late nights, drinking more than was desirable. The result was that public work suffered and the staff around Northcote getting apprehensive hatched a plot to get rid of his friend. They all told him one by one that he looked very bad and not in good health and this made him seek the advice and help of the Government House Surgeon who was also in the plot. The Surgeon after examining him told him that his liver was seriously out of order and advised him to leave India by the next boat, which he did. After that the Governor began to attend to his work.

A very funny incident occurred when Northcote went to Rajkot. At a durbar held there, Northcote delivered a speech which had been written for him by his Private Secretary and which he had memorised. When the speech was delivered, it was such a jumble that it made very little sense. The audience was surprised and on enquiry,

it was ultimately found that in the copy of the speech that was given to Northcote, the pages had got mixed up. The Governor had learnt the paragraphs by heart in the wrong order and so made the unintelligible oration.

LORD LAMINGTON

Lamington was of a mild temperament and was unable to control effectively the permanent officials who had their own way. The caucus movement to oust Pherozeshah from the Corporation was activity engineered by some Government officials and although Lamington was apprised of this, he did not make any effort to stop the activities of those officials with results which have been already referred to. Lamington resigned without completing his five years owing to the illness of Lady Lamington. In those days, there was no provision for a Governor going on leave during his five years' term of office. I met Lamington again in London in 1935 when I lunched with him at the Carlton Club.

LORD SYDENHAM

Sydenham Clarke was a clever, hardworking and strong Governor but he used his strength on various occasions in a wrong direction which created considerable public feeling against him. His interference with the autonomy of the University and his ordering the prosecution of Tilak have been referred to in previous chapters. Once I and he were placed in an embarrassing position. Soon after the great fight between him and the University, the Legislative Council budget session was held at Poona. Clarke had invited me to stay at Government House on that occasion. On the day the session began, when my turn came to speak, I went hammer and tongs for his dictatorial attitude towards the University. I wonder if Clarke felt as embarrassed as I did. His daughter Miss Clarke was a vivacious young person and had become very popular with Indians. Her premature death in Bombay roused

considerable public sympathy. After a short interval, Lady Clarke also died and later Clarke married again in Bombay. I remember, after the marriage ceremony, Clarke and his new wife driving in state from St. Thomas' Church through the city to Government House in a lengthy procession.

He will always be remembered for the enactment of a Bill for licensing the race-courses in the Bombay Presidency. The Legislative Council welcomed the measure. In the course of the debate on the measure Pherozeshah made the following remarks:

> "I will not forget the feeling of disgust—I may say here that I am not a sporting man—with which I saw a large collection of racing people returning from Poona to Bombay some time ago when I happened to be at Poona. You will fully realise the extent to which this gambling instinct prevails amongst the people when I say that the concourse consisted not only of men of lower classes, but it included people of a higher kind also—judges of the High Court and high officials of the State—and the impression which the sight made upon my mind was that though they looked such good and respectable people at ordinary times, they seemed to be a disreputable lot of men after returning from a race course (laughter). The sight struck me in that way on that occasion."

LORD WILLINGDON

Willingdon soon after his arrival succeeded in easing the tension between Government and the public. Lady Willingdon by her charming manners soon became very popular. My personal relations with the Willingdons became increasingly friendly and have remained so ever afterwards. It was Willingdon's good sense that put an end to the rupture between the Government and the University. When the War broke out, both of them worked very hard in securing public support.

In the year 1918 a meeting of the citizens of Bombay was held in the Town Hall under the presidency of Lord Willingdon in connection with the war effort. Tilak who wanted to give conditional support to the war was not allowed to speak and consequently, he together with his friends walked out of the meeting. Some time thereafter, a meeting was to be held regarding the South African question presided over by Lord Willingdon and invitations were sent to four persons representing the Bombay Home Rule League viz: Jinnah, Jayakar, Bhulabhai Desai and Horniman, to speak on the occasion. At a meeting of the Committee of the Home Rule League, it was decided that as a protest against the action of Lord Willingdon in not allowing Tilak to speak at the previous meeting, none of the Home Rule League leaders should attend the meeting. As a result of this Bhulabhai Desai resigned his membership of the League and attended the meeting and took part in it.

Owing to the unpleasantness and friction created by these incidents, there was great opposition led by Jinnah and Horniman against the move to record appreciation of Willingdon's administration, at a public meeting which was called at the Town Hall for this purpose. The opposition was successfully organised and the Town Hall was largely filled long before the appointed time of the meeting by people sympathising with the opposition. Sir Jamshetji Jeejeebhoy who presided and others who were with him found it very difficult to proceed with the meeting and the proposition was moved and seconded amidst cries of "No. No." The President declared the proposition carried and he and his supporters made a hasty retreat.

Willingdon took a notable part in supporting Montagu about the reforms. He maintained that Bombay at any rate was so much in advance over other provinces that it should have immediate provincial autonomy. In a letter to me dated November 16, 1918 he said:

"As you say the whole world is breaking a deep sigh of relief for we have won the battle of liberty. Now we must see that India is given the fullest chance to arrive at her goal and I hope that this Presidency won't be kept back for others."

Both Lord and Lady Willingdon encouraged social contact between Europeans and Indians and he founded the Willingdon Sports Club which stimulates such contact. After relinquishing the Governorship of Bombay, he was appointed Governor of Madras and in 1931, he was appointed Viceroy.

SIR GEORGE LLOYD

Sir George Lloyd assumed office in 1918. Lloyd was a strong and hardworking administrator and was not led by the permanent officials. He will always be remembered for two great undertakings, the Back Bay Reclamation and Industrial Housing and the Sukkur Barrage for which he was blamed at the time but both of which have proved of incalculable value to Bombay and Sind. Lloyd put up a stiff fight against the injustice to Bombay in the matter of the Meston settlement. He tried hard to get Bombay represented in the Executive Council of the Governor-General. Ever since the introduction of the Indian element in the Executive Council of the Governor-General in 1909, no one from Bombay had been appointed to that council. A fuller statement of events during Lloyd's Governorship has been given in an earlier chapter.

After retirement from the Governorship of Bombay, he became High Commissioner in Egypt. In 1926, when he met me in London, he asked me to visit Cairo on my return journey. On the steamer I received a cable from him that I should get out at Port Said and go to Cairo and stay with him for a day and catch the steamer again at Suez. At Port Said his A.D.C. met me and we went to Cairo by rail. I stayed there the whole day and he took

me round to see the Pyramids, the Sphnix and the Museum. After dinner, I took the train to Suez with the A.D.C. and it had been arranged that the boat was to take me up at Suez when dropping the pilot.

Through some mistake, it was reported in the papers in India that the steamer had stopped for six hours at Suez to pick me up. On that, the Bengal Chamber of Commerce raised a protest that the Mails should not have been so delayed to meet my convenience. It was all a misunderstanding which was cleared when the real facts were published.

INDIAN GOVERNORS

Lord Sinha was appointed Governor of Bihar in 1919. It is significant that after Lord Sinha, no Indian has ever been appointed permanent Governor of any province. On Sinha's resignation, Reading recommended that an Indian should be appointed to succeed him but Montagu did not agree. While the Indian Members of the Executive Council chosen from public life were not considered for being appointed Governors their European I.C.S. colleagues on the Council and even their Civilian Secretaries were so appointed. Even civilian Indian Members of the Executive Council of the Viceroy were ignored. Sir Atul Chatterji, a distinguished member of the I.C.S. who was Chief Secretary in the United Provinces and then became Member of the Viceroy's Executive Council was never thought of for appointment as Governor. Sir Abdur Rahim who was the senior Member of the Executive Council in Bengal was not even appointed acting Governor of Bengal and the Governor of an adjoining province was brought to act. When under the Act of 1935, executive councillorships were abolished and ministries were formed, the position became still more incongruous. In the year 1938 the Governor of Bihar having proceeded on leave, the Chief Secretary, an European I.C.S. Officer was appointed to act as Governor. Naturally, the Ministers protested against

this and the position was rectified by appointing an European civil servant from another province. The appointment of men from the civil service as Governors is now an anchronism under the Act of 1935. Civil Service men should be merely executive officers and should not occupy the position of Governors. Their training as executive officers does not make them fit to be entrusted with positions which require a balanced constitutional outlook. When under the Act of 1919 certain departments of government were transferred to popular control, the system of appointing Indian Civil Servicemen as Governors ought to have been abandoned. All Governors should be chosen from the ranks of public men in India and England. The Services Committee of the first Round Table Conference had made that recommendation. Civil servants should be the instruments for carrying on the administration and not the arbiters of policy. Recently Sir Chandulal Trivedi, Secretary, War Department of the Government of India, has been appointed permanent Governor of Orrisa. The appointment of an Indian as Governor is very welcome but the choice fell upon an I.C.S. man ignoring Indians in public life and also Indian members of the Viceroy's Executive Council because they do not belong to the I.C.S. The choice of Sir Ramaswamy Mudaliar who distinguished himself at San Franscisco would have been appreciated.

INDIAN MEMBERS OF PARLIAMENT

FOR a considerable time, it was felt that it would be in the interests of India if some Indians got themselves elected to the British Parliament. On various occasions, Indian political leaders had spoken on election platforms in England in support of candidates who were sympathetic towads Indian aspirations. Lal Mohan Ghose at one of the elections spoke in various places in support of the candidature of John Bright. On that occasion, some of the English newspapers said that Ghose had spoken on the same platform as Bright and did not suffer in comparison. W. C. Bannerji, the first President of the Indian National Congress stood for election to Parliament but was not successful.

Dadabhai Naoroji after a long distinguished public career, had settled down in England, in order to further the cause of India to which he had devoted himseif. In 1893 he stood for election and against great odds, was elected by Central Finsbury. During the election contest, Lord Salisbury, the Prime Minister tried to influence the electorate against him by expressing his disapproval of the election of a "black man." Dadabhai succeeded in inducing the House of Commons to pass a resolution in favour of holding simultaneous examinations in India for the Indian Civil Service. He was a member of the Welby Commission on Indian Expenditure and India's cause was so dear to his heart that he, though a member of the Commission, gave evidence before the Commission and stood his ground firmly under severe cross-examination by Lord Welby.

I met him for the first time in 1893 when he came out to India to preside over the Indian National Congress at Lahore. After that I met him again in 1899 in England and again in 1906 when he came to Calcutta to preside over

the session of the Indian National Congress. In 1907 he returned to India and was staying at Versova. I visited him there and though in feeble health at the time, he discussed several current Indian topics with his usual zeal. The University of Bombay conferred on him the Honorary degree of LL.D. in the year 1916.

SIR MUNCHERJEE BHAVNAGREE

Bhavnagree's father was the agent in Bombay of the Bhavnagar State. Bhavnagree went to England and was called to the Bar. He came out to India and got himself enrolled as an Advocate on the Original Side. After some time, he was appointed Judicial Councillor in Bhavnagar. He then went to England and in the year 1895 stood for election to Parliament as a conservative candidate and was elected. It was said that the Conservative Party supported his candidature in order to counterbalance Dadabhai Naoroji. In Indian political circles, the election of Bhavnagree met with disapproval as his attitude towards Indian aspirations was not considered friendly. When he came to India after his election, attempts were made by his Anglo-Indian and Indian friends to organise demonstrations in order to make it appear that Bhavnagree was a real representative of India. These attempts, however, fell flat and the general public were not taken in. The Committee of the Orient Club organised a Dinner in his honour. Some members of the Club objected to this move as they felt that the proposed dinner would be used as indication of the confidence of Indians in Bhavnagree. Some of the members including Pherozeshah Mehta and myself sent a letter of protest against the proposed dinner. The Committee, however, persisted in their action and Pherozeshah and myself who were among the founder-members of the Club and some others resigned from the Club. Bhavnagree was re-elected to Parliament in 1900. About the time he stood for election for the third time, Sir William Wedderburn put a question in the House of Commons enquiring of the Secretary of State whether the Native States in this

Presidency and particularly the State of Bhavnagar had reduced all unnecessary expenditure in India and in England. *The Times of India* commented on this and enquired what the 'mystic purpose' was for putting this question. On this, I published a letter in a local paper drawing attention to the fact that Bhavnagree was drawing from the Bhavnagar State something like Rs. 29,000 a year by way of pension and certain other allowances and expenses in England and India. It so happened that the candidate opposing Bhavnagree caught hold of this letter and printed a large number of copies of it and distributed them amongst the voters at the time of election. Bhavnagree lost his seat at that election. He then sent a lawyer's notice to me threatening a libel suit. Messrs Ardeshir Hormusji & Dinshaw on my behalf replied saying that I would welcome such a suit so that the facts stated by me might be proved in a Court of Law. Nothing further was afterwards heard about it.

In later years Bhavnagree's views on Indian politics considerably changed. I found that when I met him in 1926 and in subsequent years, he had become a sympathiser with the views of the extreme element in the Congress.

SHAPURJI SAKLATWALA

Mr. Shapurji Saklatwala was the third Indian to be elected to Parliament. He was a Communist. He was a good speaker and made an impression in Parliament though his views were extreme. He was for a long time in the service of the Tatas in their London office.

LORD SINHA

In the year 1919, Sinha was made a Peer and was appointed Under Secretary of State for India. He sat in the House of Lords and piloted the Government of India Bill of 1919. While he was Under-Secretay of State for India, he was in constant correspondence with me about Indian affairs. He was subsequently appointed Governor of Bihar but he resigned before completing his term of office.

THE PRESS

THE TIMES OF INDIA

When I came to Bombay in 1880, there were no Indian edited dailies in the English language in Bombay. There were two English edited dailies, the *Times of India* and the *Bombay Gazette.* Mr. J. N. Maclean, the Proprietor and Editor of the *Bombay Gazette* was an outspoken critic of the bureaucracy and was a progressive Liberal with marked sympathy for Indian aspirations. The *Times of India* which was edited by Mr. Curwen was a great protagonist of the bureaucracy. Mr. Gratten Geary who was at one time assistant in the *Times* under Mr. Curwen purchased the *Gazette* from Mr. Maclean. The *Times of India* under Curwen became ultra-conservative, when Lord Reay, an advanced radical became the Governor of Bombay. Mr. Geary in the *Bombay Gazette* heartily supported Reay in his pro-Indian policy. Mr. Curwen on the other hand disapproved of Reay's policy and on the retirement of Lord Reay wrote a severe article in condemnation of his regime and Reuter cabled that article to London to the delight of the Unionist caucus. In 1884, Mr. (later Sir) T. J. Bennett came to the *Bombay Gazette* and remained with Geary for eight years. On Curwen's death, however, Bennett joined the *Times of India.* In course of time, the *Bombay Gazette* lost its popularity and became practically moribund. It suspended publication in 1914.

During Bennett's editorship, the *Times of India* adopted a more liberal policy. Bennett was succeeded by Lovat Fraser under whose editorship the paper swung back to its original policy. Fraser was a man of great ability and resource but was very self-willed and somewhat eccentric. It is said that on one occasion, the editorial for the

next day's issue had not been written and Mr. Fraser was not to be found in the editor's room. A member of the staff went from place to place and ultimately traced him playing billiards at Watson's Hotel. When he spoke to Fraser about the difficulty, the latter then and there wrote out the leading article straight away and the staff waiting at the office was greatly relieved. The prominent part that Fraser took in the caucus movement has been described in another place.

When I was in England in May 1910, I accidently met Fraser in the street. After some conversation, he asked me to lunch with him at a particular restaurant the next day. At the appointed time, I went to the restaurant but Fraser was not there. After waiting for 45 minutes, I ordered lunch for myself. I did not hear from Fraser why he did not turn up. Some days afterwards, he again met me in the street and apologised for not being able to keep the appointment. I then asked him to come to my hotel two days later and to lunch with me. The lunch time that day arrived but there was no Fraser. After that, I had no communication from him and I never met him.

Fraser was succeeded by Stanley Reed who first joined the staff of the *Times* in 1897. Under his editorship, the *Times of India* adopted a more liberal and sympathetic policy which has since been maintained.

ADVOCATE OF INDIA

Soon after the birth of the Congress, the *Advocate of India* was started in 1886. Pherozeshah Mehta, Dr. Blaney and some others assisted in the foundation of this paper. It had a definite pro-Indian policy. In 1888, the concern was purchased by Mr. J. B. Murzban, Proprietor and Editor of the *Jame-Jamshed* from Pherozeshah, K. M. Heeramanek and Edulji Sethna who were the joint proprietors. On May 5, 1894, Mr. F. F. Gordon purchased the paper from Mr. Murzban and brought it out as an evening paper for many years. Its policy in Gordon's time was anti-Indian.

CHAMPION

In the year 1898-99, Pherozeshah, Wacha, myself and other friends encouraged and approved the idea of Mr. W. A. Chambers a prominent Architect in Bombay and an ultra-Radical in British politics who strongly sympathised with and advocated India's political progress, to start a weekly organ styled the *Champion* for advocating Indian interests and particularly the policy of the Indian National Congress of those days. The *Indian Spectator* which was started in 1876 was another weekly paper run by the late Mr. Malbari for the advocacy of Indian interests. It ceased publication in 1913.

The want of a daily newspaper fully reflecting real Indian opinion had been felt for a long time. There were Indian weeklies like the *Induprakash* and *Native Opinion* but as they appeared only once a week, they were not able to guide and mould public opinion from day to day, and thus the Anglo-Indian daily papers had the field all to themselves. There were the vernacular dailies, the *Bombay Samachar* and *Jame-Jamshed* and later on *Sanj Vartman* but there was a real want of an English daily.

BOMBAY CHRONICLE

At the time of the caucus agitation, the want of a daily newspaper entirely controlled by Indians in public life became very apparent and Pherozeshah Mehta seriously took up the matter. In the year 1912, the Indian Newspaper Company was floated with Pherozeshah Mehta as Chairman of the Board of Directors. Among the other Directors were myself, Jehangir Petit, Sir Bhalchandra Krishna and W. A. Chambers. It was essential to find a first class editor in sympathy with Indian aspirations. Mr. Ratcliffe who had been the editor of the *Statesman* for many years and was about to retire from that office was approached and pressed to take up the editorship for at least a couple of years. Ratcliffe, however, was unwilling to do so and recommended the appointment of Mr. B. G. Horniman who

was at that time on the staff of the *Statesman*. Negotiations were started with him and ultimately he was appointed editor of the new daily paper which was styled the *Bombay Chronicle*. I remember the 2nd of March 1913 on which the first issue of the *Bombay Chronicle* was timed to appear. In the early morning of that day, I got a message from Horniman that the staff had worked heroically the whole night but it was found impossible to bring out the issue as announced. The first issue accordingly came out on the 4th of March 1913. The following note appears in the first issue of the paper :

> "We have to apologise to our subscribers and the public of Bombay generally for the failure of the *Bombay Chronicle* to make its appearance on Saturday. By one of those misfortunes—in the present case a series of them in fact, that sometimes overtake a new enterprise, a mechanical breakdown threw the working organisation of the office out of gear, and after strenuous and fruitless efforts, in which the entire staff worked most loyally, it was realised at a late hour of the morning that the attempt to publish must be abandoned."

The Board had decided to price the paper at one anna a copy which was quite an innovation in those days, as the *Times of India* was being sold at four annas a copy. In a short time the *Bombay Chronicle* became very popular and the *Times of India* reduced its price from four annas to two annas and ultimately to one anna. When Pherozeshah died in 1915, I became the Chairman of the Board in his place. Rustom K. R. Cama was appointed Managing Director. As time went on, it was apparent that there was divergence between the view point of the Directors of the Company and Horniman about current political topics. These differences culminated in the resignation of Horniman and one night after arranging for the issue of the paper of the following morning, he walked out with the bulk of the editorial staff. The leading article in that

issue denounced the Board and announced the editor's and the staff's resignation.

Next morning an urgent meeting of the Board was held and hurried arrangements were made for bringing out the paper from day-to-day. Chambers, and Samarth took charge of the editorial side and the services of Evans who was on the staff of the *Times of India* were secured. The paper was brought out the next morning and on subsequent days. A tearing campaign against the Board of Directors was started by the supporters of Horniman among them being S. R. Bomanji, Umer Sobani, Jamnadas Dwarkadas and others and at meetings held in Shantaram's Chawl, the conduct of the Board of Directors in creating a situation in which Horniman had to go was severely criticised. Canvassing was set on foot for calling an extraordinary general meeting of the shareholders of the Company to remove the Directors and appoint others in their stead. The Board of Directors who had been working selflessly for a public cause did not want to become the centre of a heated controversy and bodily resigned and a new Board with M. A. Jinnah as Chairman, Jamnadas Dwarkadas, M. R. Jayakar and others as members was elected.

A few years later, Venkatram a member of the reporting staff was sent to Dharwar to make investigations in connection with the Dharwar Shooting tragedy. On his report being published in the *Bombay Chronicle*, a libel suit was filed in the Bombay High Court by Painter, the Collector of Dharwar and Police Officers against the Indian Newspaper Company. The Court passed a decree against the company for heavy damages.

As the company was unable to pay the very heavy damages and costs it was taken into liquidation and Belgaumwala purchased the concern. Ultimately Belgaumwala sold the concern to N. M. Cama who formed the

Associated Newspaper Company and the paper is now run by that Company.

In 1919, the Government of Bombay deported Horniman and he was in England for nearly seven years. He came back in 1926 and rejoined the *Bombay Chronicle* as editor. Soon after, differences arose between him and the proprietors and he had to sever his connection with that paper which he had edited with great distinction for many years. Thereafter he started a new paper called the *National Herald* which, for want of finance, came to grief early in its career. Horniman then went back to his old paper but Cama put him in charge of a new evening daily, the *Bombay Sentinel* which he continues to edit. Horniman has just completed fifty years of his journalistic career and the public of Bombay formed a Horniman Golden Jubilee Committee with myself as Chairman, to celebrate the occasion and raise funds for presenting a purse to him. On the 26th of July 1945, a purse was presented to Horniman in the presence of a large and distinguished gathering of the citizens of Bombay.

INDIAN DAILY MAIL

In the year 1923, Jehangir Petit who was then taking a prominent part in public life conceived the idea of starting an English daily. The need for an evening paper had been felt for some time as the *Advocate of India* had ceased to exist. Holsinger, a journalist from Ceylon, was the first Editor. He was very enterprising and introduced various new features in the art of journalism, the chief among them being pictorial illustrations of events. *The Times of India* in the matter of illustrations followed his example. The policy of the *Indian Daily Mail* was the advocacy of Indian interests and political freedom. The paper soon became popular and had a wide circulation. When Holsinger left in the year 1925, it was difficult to replace him by a competent editor and Jehangir Petit, myself and others induced C. Y. Chintamani the talented editor

of the Allahabad *Leader* to come down to Bombay and take charge of the editorial department. He only carried on for a short time. K. Natarajan, the well-known editor of the *Indian Social Reformer* succeeded Chintamani and he edited the paper with ability and distinction for a few years. About that time, the *Pioneer* of Allahabad had entirely changed its policy and had become pro-Indian under the editorship of Wilson who was collaborating with Sapru and other Liberals in the United Provinces. This change of policy was not to the liking of the then proprietors of the *Pioneer* and so Wilson was glad to come to Bombay to assume the editorship of the *Indian Daily Mail.* Under Wilson, the paper continued its successful career and there was increasing demand for it. At the time of the arrival of the Simon Commission, it vigorously supported the boycott.

In December 1927 a joint stock company was formed with a capital of Rs. 15 lakhs which took over the concern from Mr. Petit. The late Mr. F. E. Dinshaw was largely instrumental in floating the company. I was the first Chairman of the Board of Directors. At the time of the Round Table Conference the Liberal Party had organised a Group for work in London in connection with the Conference. Wilson was put in charge of the organisation as Secretary. After a successful career for 8 years, the paper ceased publication in 1931.

PART 8 TRAVELS

8. - - - - TRAVELS

IN 1899, I first went to Europe in the company of my friend the late Rustom K. R. Cama. After landing at Marseilles, we went to Cannes, Nice and Monte Carlo. We were staying at Nice in a hotel and used to pass the day at Monte Carlo and played at the tables. The game was exciting. At one time we made several hundred pounds but ultimately lost all that we started with. Then we ceased to play. While people from all parts of the world come to gamble at the Cassino at Monte Carlo, the local inhabitants of Monte Carlo as well as Monaco are by law prohibited from going into the Cassino except on three days in the year, one of them being the birthday of the Prince of Monaco. From the profits made at the tables by the Company which runs the Cassino, a good portion has to be paid to the principality of Monaco and that principality which consists of Monaco and Monte Carlo is run by what it gets from the Cassino and there are no taxes to be paid by the inhabitants of those places.

From Monte Carlo we went to Paris and stayed at the Hotel Continental. We saw all the sights of Paris, Versailles and Fointainbleau, beautiful places a few miles away from Paris. We made friends in the hotel with an American who had come from Ohio and was a member of the House of Representatives. He had with him his young daughter, a very charming person and we passed some pleasant days in their company. At that time the Court of Cassacion consisting of 17 Judges was sitting to consider the Dreifus case which had created great sensation throughout Europe at the time. With great difficulty, we secured access to the Court Room in the Palace of Justice. The proceedings were very animated, the

Judges as well as Counsel gesticulating and speaking with great emphasis.

From Paris we proceeded to London and stayed at what was then the Grand Hotel. We had good friends there. Dadabhai Naoroji, Sir William Wedderburn and Hume did everything to make us comfortable. Wedderburn managed to make myself and Rustom Cama Honorary Members of the National Liberal Club. In those days, the Indian National Congress had what was called the British Committee of the Congress and that Committee was publishing a weekly paper called *India*. We were co-opted as members of that Committee and used to attend their meetings. Gordon Hewart (subsequently Lord Hewart, Chief Justice of England) was editing the weekly and we met him at the Committee meetings. Dadabhai was then about 75 years old but he was more energetic and active than many younger people. I remember how I found it difficult to keep pace with him when we walked from his suburban house to the nearest railway station. Lord Rosebery was then Prime Minister of England and I and Cama attended a dinner in honour of the birthday of Queen Victoria at which Rosebery presided. He was a fluent and effective speaker. I and Cama visited Cambridge and there met for the first time at the University Mr. Joseph Baptista. After Joseph Baptista returned to India and joined the Bar and entered public life, we became good friends.

It was in 1910 that I went to Europe again. I and the late Justice Davar went together and in London we put up at the Westminister Palace Hotel. On this occasion I was in Europe only for the period of the vacation of the High Court. I had an interview with Lord Morley, the Secretary of State for India. I visited various places in England—Liverpool, Manchester and Oxford.

I went to Europe for the third time in 1926. My trip on that occasion was in connection with the case of the Maharaja of Nabha. I was in Europe for nearly five

months and besides visiting Ireland and various places in England I went to Paris, Vienna, Monte Carlo and Nice. I was much attracted by the city of Vienna and its people. There I met Prof. Steinach, the famous scientist and visited the University of Vienna. The professors there deplored that as the resources of the country had been curtailed under the settlement after the first European war, the University was not getting the financial support from the State that it used to get before. Vienna even in those days was a great centre for scientific and medical studies. There were about 3,000 American students studying at the University. The people of Vienna are very friendly and hospitable. One contemplates with great sorrow what the state of Vienna must at present be, bombarded and destroyed by the Allied forces and the retreating Germans. In Paris, I met M. Salque, an educationist and we travelled together to Vienna and from there to Venice and Monte Carlo.

In 1927, I again went to Europe in connection with Jamnagar's Bedi Port question and also for the Nabha Maharaja. I visited various parts of England on this occasion and also went to Ireland, Belgium and France.

In 1929, I again visited Europe and was in England and France for some months. I went to England again in 1930 to attend the Round Table Conference. On that occasion I came in contact with MacDonald, Wedgewood Benn, Lord Lothian and the various Indian Princes who were there for the Conference.

In the following year, I went again to England to attend the Second Round Table Conference. After the Conference concluded I went to Paris and from there to Monte Carlo and then took the boat at Marseilles. In 1934 I went to Cairo and Alexandria. From Alexandria I went to Istanbul in Turkey and stayed there for some days. What a marvellous change had come over Turkey under the driving force of Kamal Pasha! In the streets all people, men, women and children were dressed in European

style. The wearing of a fez had been made an offence. Friday had been abolished as a holiday and Sunday had been made the weekly holiday. Even the script had been altered and the Roman script had to be used though the language was Turkish. While I was there I saw a notification issued to the effect that if any letters were not addressed in the Roman script, the Post Office would not deliver them.

I went to Munich in Germany. There I visited the famous Beer Cellar where the Nazi Party was born. The Beer Cellar is a dark place underground and one sees there hundreds of people sitting down and drinking glasses after glasses of beer stored in big casks. From Munich I went to Brussels, the capital of Belgium where a big exhibition was being held at the time. After visiting Ostend, I went to London and put up at the Hotel Splendid, in Park Lane. In 1935, I went to Europe and landed at Brindisi in Italy. From there, I went to Rome, Florence, Milan and other important cities in Italy. In Rome I had an interview with Mussolini.

BENITTO MUSSOLINI

At the appointed hour I went to the Palace Venezia and was received by an officer at the entrance. Then I was taken to the second floor. At each landing, there were fully armed soldiers standing. I was then ushered into his room. It was a long room, all bare, no furniture and nothing on the walls. There was a small table in one corner and two chairs one on each side of the table. The visitor had therefore to walk across the whole length of the room to reach Mussolini's table. When I reached the table, Mussolini was standing and he shook hands with me and backoned me to the chair opposite. I sat down but he still kept standing so I said "Won't you sit down?" He said 'it is all right, let us talk' and he kept standing all the twenty minutes that I was with him. He spoke English but with a marked foreign accent. He seem-

ed to be well informed and knew about the Government of India Act of 1935 and questioned me about various Indian problems.

When I returned to my Hotel I enquired from one of the hotel staff whether he could tell me why Mussolini kept standing all through the interview. He said that he always did so when he received a person whom he did not know, for the unknown visitor might go to him under an assumed name and might make an attempt on his life; he therefore, kept standing so that he could watch the movements of the sitting visitor and if the visitor attempted to do something, he while standing could more easily overpower him. One day, some newspaper people came to the hotel and wanted to have a talk with me about Indian affairs. I was sitting in the lounge when they came and I received them. For a few minutes, they sat down but looked uncomfortable and were looking all round the room. One of them then said to me that they would prefer to have a talk with me in my room. So we went to my room. They explained that they did not want to be seen talking to a stranger in the lounge because there might be spies who would make some report against them for confabulating with a foreigner and they might get into trouble. They further told me that the articles in their papers before publication were always censored; not only that, but they were enjoined to write something in praise of Mussolini almost every day.

From Italy I proceeded to Vienna and from there to Bad Gastine, the famous watering place in Austria. From there I went to England and stayed at the Hotel Splendid. On this occasion I met and had conversations about India with Lord Zetland, the Secretary of State for India, Lord Lothian, Lord Reading and Lord Irwin.

In 1936, I again went to Europe. In England I stayed at Grosvener House. I met Lord Irwin, Lord Lothian, Lord Strabolgi and Mr. Wedgwood Benn and discussed Indian affairs with them.

JAPAN

In May 1937, I visited Japan. I was there for nearly three months and visited important cities, among them being Kobe, Osaka, Tokyo, Yokohama as well as hill stations like the picturesque Mienoshita. One is struck with the curious blend of oriental antiquity and occidental modernity in Japan. While the Japanese have developed modern industries on a large scale, in their homes and dress and social affairs they have preserved their old ways. One sees in the streets in big towns people moving about in kiminos and sandals with hats on the head. Their women-folk have not taken to European dress but appear in their graceful Japanese style. Women have still no rights to property. They have in their homes no furniture of the western style. They do not dine on a dining table but sit down on their haunches on the floor with a stool in front on which the meals are served on plates.

Japan in a period of about 70 years has made wonderful progress. This change came about by the foresight of Emperor Mieji who decided that industrialisation of Japan was the only salvation of the country. He arranged to send every year hundreds of Japanese youths for being trained in the West in various industries and crafts. Cotton Mills and other factories were initially set up by the State and after some years of working were handed over to private enterprise. In buying machinery from the manufacturers in Europe and America the Japanese stipulated that the manufacturers should send their experts for a certain number of years to train up apprentices in the factory.

The devotion of the Japanese people to their Emperor is phenomenal. They consider him and respect him as a divinity. It is not an uncommon sight when the Emperor is driving through any street that the windows on the upper floors of houses abutting on the street are closed by the inhabitants, for the people consider it wrong to look down on the Emperor from above. The whole

Japanese population is intensely patriotic. One may well say that patriotism is almost a disease. I was in Japan when the China War broke out. I saw in the papers one morning the following news: A young Japanese had offered himself for military service but was rejected on medical grounds. He committed *hari kiri* (suicide) and left directions that out of the big amount for which his life was insured, 80 per cent should be given to the War Fund and only 20 per cent to his family. He said that that was the only way in which he could now serve the country in this crisis. There was another instance in which a young bride committed suicide. She was recently married and her husband was called to the colours and had gone to China. From there, he was writing letters to her expressing sorrow at their parting, from time to time. The bride left a statement in which she said that as her husband was thinking of her all the time, he would not be doing his best at the front and the only way in which he could be made to devote all his attention and time to the prosecution of the war was for her to disappear.

In order to account for Japan being able to offer for sale in other countries their goods at very cheap prices, it is often said that there is sweated labour in Japan. This is entirely wrong. I specially arranged to visit several factories and studied labour conditions. Labour in Japan is contented and efficient. Further, labour is looked after better than anywhere else. Primary education being compulsory, labour in Japan is intelligent. A large proportion of labour employed in cotton and silk factories is female labour. Girls aged 16 to 20 years are brought under a five years' contract to work in factories. They are housed in good habitations in the factory compound and recreations of all sorts are provided for them. They have games, swimming pools, radios, etc. They are provided with three meals a day by the employers, for which a moderate deduction is made from their wages. Their salaries after paying out of it a small sum for sundry ex-

penses is credited to their account and at the end of their five years contract, the sum accumulated to their credit with a certain percentage added to it by the employer is paid to them and they go back to their homes and get married.

It is remarkable that in Japan, religion does not come into politics or public affairs. There are three main religions Shinto, Buddh, and Christian. Religion is considered to be every individual's own affair. I came to know families in which the members professed different religions but they all lived together. I found a father following the Shinto religion, one son Buddhism and another son the Christian religion. They lived together without any trouble and each one resorted to his own temple or church. Whatever their religion, all Japanese dress in the same manner. In fact, no one cares to enquire what the religion of the other man is. Further, the laws of property, succession and inheritance are the same for all Japanese whatever religion they belong to.

Their judicial system is rather peculiar. In Civil cases, the Judge himself examines all the witnesses and thereafter counsel for either side are permitted to put further questions. When a decree is passed a successful litigant gets from the other side only the court charges but not the fees he pays to his counsel. As regards fees of lawyers, they are allowed to stipulate with their clients for a share in the decretal amount. The share thus paid to the lawyer ranges from 5 to 50 per cent. In criminal cases the Judge closely cross-examines the accused.

It is a great pity that Japan entered the recent war. She was the one Asiatic Nation that had become a world power, had industrialised on western lines and had captured all markets. If she had not entered the war, she would have remained a strong and leading Asiatic power.

PART 9

INDIAN STATES AND RULERS



Lord Lothian, Lady Jehangir, Sir B. N. Mitter, Sir Thomas Stangman, R. D. Sethna, Rustum D. N. Wadia, V. F. Taraporewala, Sir Henry Lawrence & Frank Brown.

9. - INDIAN STATES AND RULERS

IN my professional capacity, I have worked for several States. In this part I am giving in brief my recollections of the matters I dealt with and of my personal contact with some rulers.

NAWANAGAR

I knew Jam Ranjitsinghji before he succeeded to the Jamnagar *gadi*. He was educated in England. While there he earned great fame as a cricketer and became very popular. After he became the Jamsaheb, we used to meet as friends but I had not worked professionally for him. It was for the first time in 1927 that he asked me to go to Jamnagar professionally. The dispute between the Government of India and the Nawanagar State had arisen under the following circumstances.

There are several ports in Kathiawar one of them being Bedi Bunder near Jamnagar. The custom duties levied by the various States in their respective ports were not uniform and varied from the rates levied at British Indian ports. This caused great inconvenience and the Government of India had imposed a customs preventive line along the land frontier of Kathiawar. There were negotiations from time to time for making the ports of Kathiawar free ports in the sense that foreign goods imported at those ports might go into British India free of duty and thus make unnecessary the preventive customs line. After negotiations extending over many years, certain terms were offered by the Government of India in 1917 and if those terms were accepted, the Government of India were prepared to treat the Kathiawar ports as British ports in respect of coastal as well as foreign trade. Foreign goods imported at the ports of the States,

on which duties according to the British India scale had been levied, were to have free entry into British India, the States retaining the duties levied by them at their ports. The offer, however, contained the proviso that "if at any time in the future by the operation of a port capable of accommodating large vessels or otherwise, the fiscal interests involved become very important, the Government of India would reserve the right to reconsider the position generally."

Jam Ranjitsinghji on receipt of this offer wrote with regard to the above proviso that "the expression 'the fiscal interests involved become very important' introduced a vague reservation and was calculated to interfere with the healthy development of the resources of the States to the extent of their natural capacities." In reply to this, the Jamsaheb was informed that Government had no intention of imposing conditions which would interfere with the healthy development of the resources of his State to the extent of its natural capacity. This reply meant that if the fiscal interest involved became very important by reason of the healthy development of the resources of the Nawanagar State to the extent of its natural capacity, that would not afford to the Government of India any ground for reconsideration of the agreement arrived at. On this understanding being reached, the Nawanagar State undertook intensive development of its Bedi port and spent very large sums for that purpose. In consequence, large imports of foreign goods came to the port and it became a serious competitor to British Indian ports. Other States like Morvi and Junagadh also developed their ports.

In 1927, the Government of India contemplated putting an end to the above arrangement that was in operation from 1917 and decided to hold a conference at Mount Abu to consider the whole question, and the various States concerned were invited to the conference. On May 20, 1927 the Jam Saheb sent a cable which was drafted by myself and Sapru to the Secretary of State in the matter.

On June 24, the reply of the Secretary of State was conveyed to the effect that he was unable to interfere at that stage and he hoped that the Abu conference would result in doing justice to all interests involved. The conference was held on June 27, and subsequent days. The contention of the Government of India was that the condition entitling them to end the agreement of 1917 had been amply fulfilled, and that the conference was to be limited strictly to finding a new arrangement which might obviate the re-imposition of land customs line between Kathiawar and British India, and if no such arrangement could be found, to consider the measures to be taken to reduce to a minimum the inconvenience attendant on the re-imposition of the line.

Before the conference, certain proposals of the Government of India were circulated to the States attending the conference. I and Lalji Naranji attended the Abu conference as representatives of Jamnagar. At the conference, the representatives of Jamnagar and the representatives of the Government of India were able to arrive at a workable scheme on the administrative point. It was arranged that goods imported at the State ports were to be allowed free entry into British India on production of a certificate that full duty on the British Indian scale had been recovered at the State ports and that the States would periodically pay such collections to the Government of India.

As regards the financial arrangements, a deadlock occurred. The Government of India's offer was to allow the States to retain out of the customs revenue realised a sum equivalent to the highest amount reached in any year up to 1925-26 plus an amount of four or five per cent on the capital amount expended on the port. This excluded the highest figure reached by Nawanagar in the year 1926-27 while in the case of all other States, the highest figure had been reached in earlier years. The highest total figure that the Government of India could possibly think of al-

lowing was stated to be Rs. 34 lakhs per year which Jamnagar was not prepared to accept. The Government of India promptly re-imposed the land customs line.

After the Abu conference, the Jamsaheb wished me to go with him to London in order to prepare the necessary representation in the matter of the Bedi port. We had also to pursue further the matter about the Maharaja of Nabha which the Jamsaheb had taken up in 1926. I was unable to accompany him but I followed him a fortnight later. He sent me a letter from the steamer dated June 28, 1927 in which he said:—

> "This is just a short line to thank you warmly for your kind services to me and to my State in what is probably the most important issue during the last 20 years. This matter has brought me anxieties but on the other hand it has enabled me to come in touch with you more intimately and professionally. This has been such a joy and a pleasure to me and I realise that there are amongst my countrymen brains and intellects to match any one. Our association, I trust, will be long and fruitful of good (and ever lasting good) to our country and if, as is my ambition and I know yours too to serve our country, I can serve India in any way I hope you will tell me."

The Jamsaheb submitted a reasoned Memorial to the Secretary of State for India against the action of the Government of India. The Memorial was not sent to the Secretary of State by the Government of India but was kept pending for further negotiations. In the meantime, the Jamsaheb died in 1933. Lord Willingdon was then the Viceroy. After Ranjitsinghji's death, Jamsaheb Digvijayasinghji, the present Jamsaheb agreed to accept what Lord Willingdon might decide and Lord Willingdon decided that out of the custom duties levied on goods imported at Bedi Bunder and re-exported to British India, the Nawanagar State should be allowed to keep Rs. five lakhs a year, be-

sides retaining the customs duty levied on goods consumed in Kathiawar.

Jam Ranjitsinghji had a beautiful house on the Thames at Staines near London and whenever both of us were in England, he used to invite me to stay with him at Staines. The house belonged originally to Sir Edward Clarke, once Attorney-General of England. He had also a beautiful estate at Ballina-Hinch in the County of Galway in Ireland. The estate extended over hundreds of acres and there was a small river passing through which supplied very good fishing. The house was an old Castle belonging to one of the loyalist landlords and during the disturbances in Ireland the rebels took possession of the castle and made it their headquarters. The landlord was under the circumstances very anxious to sell it for any price that he could get and the Jamsaheb made a very good bargain. In August-September 1926, he invited me to go there and I was with him for about 10 days. I can never forget the pleasant time which we passed together there. Madhuba Saheb, the then heir apparent of the Maharao of Cutch and now the Maharao was also with us at that time.

I stayed at Dublin for a few days on my return journey to London. At that time Mr. Tim Healy was the Governor-General of Southern Ireland newly appointed under the agreement between England and Ireland. I met him and during the conversation, he made a very characteristic remark which showed how bitter Irishmen were against the British. He said that he believed that he was appointed Governor-General in the expectation that his own countrymen would murder him for he took office on the footing of Ireland remaining within the British Commonwealth. At that time, there was great agitation going on in Dublin over the statues that stood in the public square. These statues were of British statesmen and Generals. The popular cry was that all these statues should be removed except that of Edmund Burke who was an

Irishman. I do not know what ultimately happened in that controversy.

Jamsaheb Ranjitsinghji was keen about promulgating a constitution for the Government of Nawanagar State in which he intended to give the representatives of the people an effective voice in the administration. He requested me to draft such a constitution. I prepared a suitable draft and sent it to him. We discussed the matter thoroughly at Balachadi situated on the sea a few miles away from Nawanagar. In connection with this matter he wrote to me on February 14, 1927 as follows:—

> "I have not forgotten the constitution matter and at the opportune moment, I will carry out my project under your wise guidance and help."

At the time of the Civil Disobedience movement, the Jamsaheb wrote to me as follows in one of his letters:—

> "I must congratulate you and those who hold your views amongst the Liberal Party of India, for the stand you have taken in the political arena of India. You may rely on assistance from me and my brother Princes in this matter, because we are like your own party, hearty co-operators with you, and the Government of India in this matter."

My relations with the present Jam Saheb are very cordial.

CUTCH STATE

I came in contact with the late Maharajadhiraj Khengarji of Cutch very early in my career as a lawyer. He used to get representations on various matters drafted by me. His Highness was an outstanding example of the old class of chivalrous Rajputs. He had a commanding figure and had a keen insight into human affairs. He was very clever and intelligent and I found him making valuable contributions in the course of consultations with lawyers like Wilfred Greene and Sir Leslie Scott.



The rulers of the State of Morvi and those of Cutch are descendants of a common ancestor. Within the territory of Cutch, Morvi had certain land-locked enclaves while Cutch had sovereignty over the gulf separating the two States and some ports within Morvi territory. This led to perpetual disputes between the two States. In 1880, in order to put an end to this state of things, the British Government came to the conclusion that a complete separation of interests between the States of Cutch and Morvi should be effected, and appointed Mr. Kennedy as Commissioner to carry out this object. Cutch agreed to this Commission on the distinct understanding that a complete separation would be effected. On Mr. Kennedy's report, however, the British Government in 1900 issued orders that all the sovereign rights which Cutch then possessed *de facto* and *de jure* over the southern half of the inner gulf of Cutch, including the right to levy the customs duty, should be transferred to Morvi. On the other hand, while Morvi was ordered to hand over to Cutch its rights in certain minor enclaves north of the inner gulf, it was permitted to retain the main enclave of Adhoi with the five neighbouring villages in the heart of Cutch State.

Cutch never reconciled itself to this arrangement. It contended that the British Government had no right under their treaty with Cutch to enforce the deprivation of any part of the sovereignty of Cutch since they did not bring about "complete separation of interests," on which understanding alone, Cutch had agreed to the appointment of the Commission.

Ever since 1900, Cutch has been agitating this question. The reply of the British Government has always been that they could ask Morvi to surrender sovereignty over Adhoi to Cutch, only if Cutch could find territory in Kathiawar equivalent in area and revenue to be given to Morvi in full sovereignty in exchange. It is impossible for Cutch to find such territory unless the British Government helps Cutch in the matter. The small state of Malia which

is contiguous to Morvi can, with the consent of the ruler of that State, be given to Morvi, Morvi surrendering Adhoi to Cutch and Cutch giving Malia equivalent Cutch territory on the border. A step towards this solution could have been taken in the recent attachment orders by attaching Malia to Cutch instead of attaching it to Morvi. The Malia ruler is now a minor and on his attaining majority, the arrangement indicated above, might have been brought about if Malia had been attached to Cutch. Maharao Khengarji had been agitating this question of removing Morvi enclaves in the midst of Cutch territory and he used to consult me and take my advice on many occasions ever since 1900.

Maharao Vijayarajji succeeded him in 1942 and my personal relations with him are as friendly as they were with his father.

GONDAL

Soon after I resigned the membership of the Council and reverted to the bar, the late Sir Bhagvatsinghji, Maharaja of Gondal, called me to Gondal for drafting a rejoinder to the petition of the Porbunder state asking for a review of certain orders that had been passed a good many years ago by the Secretary of State for India regarding certain questions arising in the administration of the Porbander-Gondal Railway. A copy of the review petition was sent to Gondal by the Government of Bombay to whom the petition had been presented to be forwarded to the Secretary of State, and Gondal was asked to submit its rejoinder within 30 days. A long previous history of the question had to be gone into before a proper rejoinder could be prepared and thirty days' time was quite insufficient. I thought that extension of time would be granted as a matter of course under the circumstances. I thereupon wrote to Mr. Hotson who was then Political Secretary asking for extension of time on behalf of Gondal. Not having received a reply for a few days, I phoned to Hotson at Poona

where the Bombay Government was at the time. Hotson told me on the phone that the Governor Sir George Lloyd had declined to give any extension. This was very surprising. On my reaching Gondal, I got the Maharaja to send a detailed cable to Lord Reading the Viceroy as well as to the Secretary of State asking for six months' time. In a few days orders came granting the extension. Lloyd was to vacate his office in December 1924 and so Gondal's rejoinder could not reach the Government of Bombay before he left. He had, however, so much persuaded himself about the correctness of Porbunder's case that he left a note in support of Porbander's representation and meeting in anticipation the arguments that Gondal might put forward. In due course, Gondal's rejoinder was sent in and ultimately the Secretary of State decided in Gondal's favour and rejected the review petition of Porbander.

I had known the Maharaja of Gondal personally before but after this work which I did for him, our personal relations became more friendly. In subsequent years, I used to do a good lot of drafting work for Gondal.

His administration of the Gondal State was exemplary. He made ample provision for schools, hospitals and electricity in his State. He had accumulated large surpluses from the revenues of the State and invested them. The income of those investments sufficed in a great measure to meet the cost of the administration and there was very little taxation on the people. When Lord Willingdon visited Gondal on the eve of his retirement, he referred to this in his speech and said he would like to settle down in Gondal as that was the only way in which he might escape the heavy taxation in England.

Sir Bhagvatsinghji was of very simple habits and dressed and lived like any ordinary gentleman. I never saw him wearing any jewellery. When Sir George and Lady Lloyd visited Gondal, Lloyd held a Durbar to meet the officials of the State. He told the State Officer in charge of the arrangements for the Durbar, that two golden chairs

should be placed for him and Lady Lloyd.The officer went to the Maharaja and communicated this to him. The Maharaja said "Tell His Excellency that we keep no golden chairs in Gondal and that he will have to be satisfied with ordinary chairs."

NABHA

In May 1926, the late Sir Sultan Ahmed of Gwalior who was my colleague on the Hunter Commission saw me in Bombay and inquired whether I would take up the case of the Maharaja of Nabha. On my agreeing, I received a call from the Maharaja of Nabha to go and see him at Dehra Dun, where he was staying at the time. What had happened was that certain officers of the Patiala State who had gone into Nabha territory were arrested, prosecuted and convicted for certain offences. The allegation of Patiala was that false charges had been concocted against these officers and the Maharaja of Nabha was responsible for it. Nabha made certain counter-charges against Patiala. On this Mr. Justice Stuart of the Oudh Court was appointed to enquire into those allegations. The late Sir Ali Imam appeared for Nabha and Sir N. N. Sarkar appeared for Patiala. Justice Stuart reported that although there was no specific evidence connecting the Maharaja of Nabha with the acts alleged he must have known of them and what was alleged could not have happened without his connivance, if not approval.

The Government of India held that the charges made by Nabha against Patiala were not true while the charges made by Patiala against Nabha were mostly established. They held that it was inconceivable that the perversion of justice could have been reduced to a systematic plan against Patiala without the Maharaja's full general approval and countenance. The Government of India further directed that a sum of Rs. 50 lakhs be paid by Nabha to Patiala as compensation. As regards the Maharaja himself they said that as he agreed to abdicate nothing further

need, be done. He was asked to remove himself to Dehra Dun. The Maharaja always maintained that he was made to sign the abdication letter against his will.

An allowance of Rs. 25,000 a month was sanctioned to be given to him. He was allowed to retain his salute and customary titles. His second Maharani Her Highness Sarojini Devi was staying with him at Dehra Dun, when I went there. The Maharaja himself, I found to be a very intelligent and well-read person. While he was the Tikka Saheb (heir apparent) he was a member of the old Imperial Legislative Council and in that capacity had shown great independence and always supported the popular cause. I found him, however, a very excitable and obstinate person. Her Highness, I found to be, a very thoughtful and balanced person. Her father was a high officer in the Hyderabad State and she had been educated in England.

After various consultations, I took up his case. The great difficulty, however, that I found was that he would never follow advice but would do things as he willed. It was arranged that I should proceed to England to see His Highness the Jamsaheb Ranjitsinghji who was there at the time, and make him acquainted with the Nabha case. Mr. Durga Prasad, a pleader of Allahabad, was sent by the Maharaja with me to England. I there contacted the Jamsaheb and made him go through the papers and facts of the case and he promised to help. I worked for the Maharaja subsequently in various directions but those efforts did not bear fruit as it was very difficult to make him follow advice. In 1928, the Government of India arrested him under the Bengal Regulation 1818 and interned him at Kodaikanal. They deprived him of the title 'His Highness' and reduced his allowance from Rs. 25,000 to Rs. 10,000 a month. Subsequent to this, however, I tried during the Viceroyalty of Lord Irwin as well as of Lord Willingdon to improve his position but every time the efforts failed because of the Maharaja not following advice.

At Kodaikanal, the third Maharani whom he had meanwhile married was living with him. He once placed me in a very embarrassing position. In August 1933, Lord and Lady Willingdon paid a visit to Bombay and stayed for some days. The Maharaja wrote to me from Kodaikanal that he was sending the Maharani to Bombay to see Lady Willingdon and that I should arrange for Lady Willingdon giving her an interview. He further requested me to put up the Maharani at my residence. I was extremely doubtful about the interview being granted but I saw Lady Willingdon and she explained to me why she was not able to see the Maharani. Before my communication could reach the Maharaja I received his telegram that the Maharani had already left for Bombay. Lord and Lady Willingdon were to take tea with me at my residence on a particular day. The Maharani was timed to arrive on the previous day. I could not well ask her not to be present at the party if she was staying with me. On the other hand, I could not force her presence on the Willingdons in view of the fact that the interview had been sought and refused. I got out of the embarrassment by engaging rooms for the Maharani at the Taj Mahal Hotel and sent my man to the station to escort the Maharani to the Hotel and tell her that as it was inconvenient to put her up at my residence for a couple of days, she should stay at the Taj and then after two days come and reside with me. After two days she came and stayed with me for a few days. In conversation she entirely agreed that the Maharaja was very difficult to deal with as he would always act upon his own whims and not follow advice. It was indeed sad that the Maharaja died while still in internment bitterly feeling that he had been badly treated. The young Maharaja is now on the gadi and under the able guidance of his mother is, I am told, doing well in his administration of the State.

BARODA

In 1875 a Commission was appointed by the Government of India to investigate the charge against Malharrao,

the then Gaikwar, of having attempted to poison the Resident at Baroda. Sir Richard Couch, Chief Justice of Bombay at that time was the President of the Commission. Sergeant Ballantyne came out from England to defend the Gaikwar. The verdict of the Commission was divided, and the British Government in view of all the circumstances decided to depose Malharrao. Jamnabai, the widow of Khanderao, the brother and predecessor of Malharrao adopted with the approval and consent of the Government of Bombay, Sayaji Rao who was a minor and he was put on the gadi. Sir T. Madhav Rao was appointed the Prime Minister. On his attaining majority Sayaji Rao was invested with full powers. He proved a very hard working and capable ruler and the State of Baroda during his long administration made great progress. He introduced compulsory primary education in the State, effected the separation of judicial and executive functions and carried out various measures of social reform.

Sometime in 1890-91, I was in Baroda staying for a few days with Prof. T. K. Gajjar who was there at the head of the Kala Bhavan (Technical Institute). Mr. Athalye whom I had known as pleader on the Appellate Side had accepted the post of Naib Dewan and was at Baroda. He asked me whether I would like to meet the Gaikwar. I said I would be glad to do so. He accordingly arranged an interview. I went to the Palace at the appointed time and was received by an A.D.C. The A.D.C. then told me that I would have to take off my shoes before being ushered in His Highness' presence. I asked the A.D.C. whether this rule of taking off shoes was insisted upon in the case of all people including Europeans. He said in answer that Europeans went in with shoes on. I further asked him whether the Dewan being an Indian had to take off his shoes while his European subordinates could go in with shoes. He answered in the affirmative. I then told the A.D.C.: "I am very sorry. I have no particular business with His Highness and I do not care to submit to the rule of

taking off shoes which is applied with racial discrimination." I came away without seeing His Highness.

Years after this, I came in contact with the Maharaja mostly in England. Whenever he and I happened to be there, he used to ask me to go and stay with him for a day or two at his beautiful house at Haselmere, which at one time belonged to Lord Tennyson, the Poet Laureate.

JUNAGADH

In October 1892, Pherozeshah accepted the office of Judicial Councillor of the Junagadh State. He was so appointed for the purpose of reorganising the judicial system in the State and to preside in the final Court of Appeal. This was only a part-time appointment and he used to go to Junagadh periodically for a few days. He appointed Jamaitram Nanabhai, a son of the late Mr. Justice Nanabhai Haridas, as Registrar of his Court. Jamiatram shortly afterwards fell ill and was unable to go to Junagadh for some time. Pherozshah asked me to act for him. I went with Pherozeshah to Junagadh on three of his visits. After hearing the appeals, he used to write out the judgments in English and I translated them into Gujerati, the language of the Court being Gujerati. While he was Judicial Councillor, serious Hindu-Muslim riots occurred at Prabas-Patan which agitated tht communities concerned throughout the Presidency. It was understood that the Government of Bombay under whose political supervision Jungadh was, contemplated some sort of intervention and proposed to constitute a Court of Judges nominated by them to try the offenders. Under Pherozeshah's advice, the State resisted any such intervention and maintained that the Courts of the State must try the cases but that the State would constitute a Special Tribunal to be presided over by Pherozeshah and would take a loan of the services of two District and Sessions Judges under the Government of Bombay to sit as Judges along with Pherozeshah. Government ultimately accepted this proposal and the Special Court was constituted. The trial lasted for nearly two

months and the decision was unanimous and met with general approval.

Having thus come into contact with the State, in later years I used to be employed by the State on occasions for drafting various representations. When I went to Junagadh with Pherozeshah, I came into contact with the late Purshottamrai Zala who was the Naib Dewan and my association with him lasted till his death somewhere in 1933-34. He got into disfavour later and resigned the post of Naib Dewan in 1903 after serving the State for 27 years, and came to Bombay. Some of his properties were confiscated by the State. In 1906, a charge was preferred against him of having embezzled Rs. 1,53,000 of State money. He was tried in his absence and held guilty and was ordered to pay to the State Rs. 1,53,000 and a fine of Rs. 25,000. In execution of this sentence, all his remaining properties were confiscated. On his petition to the Government of Bombay and the Government of India, Sir Robert Holland of the Political Department was appointed in 1916 to enquire into the matter. After full enquiry Sir Robert Holland reported that Purshottamrai was unjustly convicted and his property confiscated as the result of the conviction should be returned to him. He further said:

> "It was wrong to try him in the manner in which he was tried in 1906, it was wrong to condemn him on the evidence recorded and it was wrong to reject his petition for review in the circumstances in which it was rejected in 1913. He has been heavily penalised by the confiscation of his property and has lived for many years under the shadow of a wrongful conviction. The Durbar will doubtless welcome the opportunity for expunging what must be regarded as a dark blot on the judicial record of the State."

Mr. Rendall, the Administrator tendered pardon to Purshottamrai and sent him a cheque for Rs. 1,25,000 which was much less than the real value of the properties confiscated and mesne profits therefrom from 1903 to 1918.

Purshottamrai during his lifetime and his sons after his death from time to time petitioned the State but without success.

In 1923, when Tribhuvanrai Rana was the Dewan of Junagadh State, dispute arose between Junagadh and another State about the village of Zhapodad. The matter was heard as a political suit by the Judicial Assistant at Rajkot and on his report, the Political Agent decided against Junagadh. I was asked to draw an appeal to the Government of Bombay as in those days the Government of Bombay decided only on written representations and the appeal had to be a full one containing all arguments and references to documents. Soon after the appeal was presented, the political relations of the Kathiawar States were transferred to the Government of India and under the powers delegated by that Government, the Agent to the Governor-General had to dispose of the appeal. Mr. Watson, the Agent to the Governor-General, decided the appeal in favour of Junagadh which was a great triumph for that State.

DHARAMPUR

When I was a pleader, I was retained by the father of the present ruler of Dharampur as Legal Adviser to the State for years. The present ruler renewed my engagement as Legal Adviser to the State. Maharaja Vijaidevji is a well-educated man and has travelled extensively both in the West and East. He is an expert in Indian music and has published several volumes on that subject and has devised a system of notation for Indian music. There is free education and free medical relief in the State. He is a man of simple habits and has made many friends in Bombay and other places. The Dharampur ruling family belongs to the clan of Sisodia Rajputs which is highly honoured among the Rajput community.

CAMBAY

Under a treaty between the State of Cambay and the East India Company in 1856 it was agreed that the Port of

Cambay was to be treated as a British Customs Port and imports at that port were to be allowed free entry into British India. In 1885, a fresh arrangement was notified on the same footing. Relying on the said treaties and engagements, the Cambay State had improved the port at considerable cost. The State worked the port after the improvements were effected for a period of five months from November 2, 1932 to March 20, 1933 and attracted a considerable amount of sea-borne trade. By a notification dated April 8, 1933, the said Notification of 1885 was cancelled, the effect of which was to deprive the Port of Cambay of the privileges enjoyed till then as a British Customs Port and to treat the State of Cambay as foreign territory within the meaning of the Tariff Act. The Government of India further established a customs station for the levy of customs duty on goods imported by land from Cambay State into British India. I drafted various representations for the State and also interviewed the Political Department. There was a conference with Lord Willingdon, the Viceroy, at which I and the Nawab of Cambay and Glancy, the Political Secretary, were present. What was alleged against Cambay was that the State, had by some questionable means artificially stimulated imports at Cambay Port.

Ultimately in May 1937 a Conference was held at Simla between Cambay State, the Political Department and representatives of the Board of Revenue. I represented Cambay State at the conference. The ultimate settlement was that the State was to keep upto Rs. 2 lakhs from the customs duties levied on goods going into British India from the port of Cambay.

THE SHATRUNJAYA HILL (JAINS AND PALITANA)

The hill of Shatrunjaya is situated within the State of Palitana in Kathiawar. On that hill are various temples of antiquity containing deities worshipped by the Swetamber Jain community of India. The management of these

temples has been carried on for many years by an institution styled Anandaji Kalyanji, the Trustees of which have from time to time been elected by the community. These representatives of the Jain community are in possession of sanads given by some of the Moghul Emperors. According to the Jain community, the Palitana Durbar assumed sovereignty long after the grant of the hill to the Jains. In troublous times, in order to secure the safety of the pilgrims resorting to the hill, the community agreed to pay a certain annual sum to the Palitana Durbar by way of *rakhopa*, i.e., securing the safety of the pilgrims. In the year 1886, an agreement was entered into between the Jains and the Palitana Durbar by the intervention of the British Government under which an annual payment of Rs. 15,000 was fixed as payable to the Durbar for a period of 40 years at the end of which,—if the parties did not come to any agreement—the British Government were to fix the amount of the annual payment and the further period for which it was payable. From time to time various disputes arose between the Durbar and the Jains, and the Jain community was allowed direct access to the British Government with regard to their differences with the State. Latterly, the British Government began to take the view that with regard to any complaints that the Jains may have against the Durbar, they should approach the Durbar, and if necessary, have resort to the Courts of Palitana.

The Jain community never acquiesced in this position. In the year 1926, the forty years having expired from the date of the agreement of 1886, the Palitana Durbar applied to the Agent to the Governor-General at Rajkot that the Durbar should be allowed to revert to the system of poll-tax that was (according to the Durbar) in force before the agreement of 1886. A copy of this representation was supplied to the Jain community and they were asked to submit their rejoinder through the Palitana Durbar. The Jains demurred to this and contended that they were entitled to send their rejoinder direct to the Agent to the Governor-

General who could then supply a copy thereof to the Durbar.

Considerable controversy ensued between Mr. Watson, the Agent to the Governor-General, and the Jain community. The latter, however, declined to depart from the previous practice. Ultimately, the Agent to the Governor-General received a rejoinder directly from the Jain community without prejudice to his contention. Throughout this controversy the Jains acted under my advice.

Mr. Watson gave a hearing to both parties at Mount Abu. I appeared for the Jains and Bhulabhai Desai appeared for the Palitana Durbar. Mr. Watson fixed the annual payment to be paid by the Jain community at one lakh of rupees. In his judgment, however, Mr. Watson went out of his way to define the relations between the Jain community and the Durbar and the limits of the right claimed by the Jains to invoke the interference of the British Government in any dispute between them and the Palitana Durbar regarding the Shatrunjaya Hill. He opined that the Jains had no special claim to invoke the interference of the British Government except in extreme cases and that for disputes that may arise from time to time it was open to the Jains to resort to the Palitana Courts.

The Jain community appealed to the Governor-General in-Council against Mr. Watson's decision and they prayed for a hearing to be given. Lord Irwin agreed to give such hearing at Simla in the month of May 1928. The Executive Committee of Sheth Anandji Kalyanji were there and I appeared for them. H. H. the Thakore Saheb of Palitana State was also there and Bhulabhai Desai was representing him. By this time Mr. Watson had become the Political Secretary and at the hearing he was present with the papers of the case. I opened my case and in doing so, severely criticised the judgment of Mr. Watson and pointed out that his observations about the relationship of the Jain community with the Palitana Durbar with regard to

the Shatrunjaya Hill and the temples thereon were mistaken and were likely to create more friction between the parties. After hearing both parties, Lord Irwin advised the parties to put their heads together and arrive at an agreed settlement.

I and Bhulabhai Desai after discussion between ourselves came to certain terms which were then explained to the parties who were persuaded to agree to them. The parties, however, were unable to agree regarding the amount of the annual payment to be made by the Jains to the Durbar and it was decided to put all the agreed terms before Lord Irwin for approval by his Government and to leave it to him to fix the amount of the annual payment. I and Bhulabhai gave to Lord Irwin privately an idea of the amount we both thought would be reasonable to fix. Lord Irwin fixed the amount that we had indicated, viz., Rs. 60,000 per year for a period of forty years. The agreement was signed by the parties and was counter-signed by me and Bhulabhai, and Lord Irwin signed it in token of the approval of his Government.

Under the settlement the Jains secured what they cherished as an important right. viz., the right to approach the British Government in case of differences arising between them and the Durbar in relation to the Shatrunjaya Hill. Orders of the Bombay Government and the Secretary of State which threw doubt upon this right were superceded. By this agreement, the Jains secured the right of full proprietorship over the temples on the hills and the grounds appertaining thereto and the enjoyment thereof without any interference by the Durbar.

GWALIOR

The late Maharaja Madhavrao Scindia was a man of simple habits and took a keen interest in the administration of his State. He sat down to work regularly every day for several hours. My personal relations with him were very friendly. Whenever he was in Bombay, we used

to meet. Sometimes he used to come to my house at Napean Sea Road and walk into my study. One morning it happened that a new servant was at the door who did not know him. So when he came, the servant asked for his card. The Maharaja sat down on the verandah and his card was brought to me upstairs. On seeing the card, I rushed down and escorted him upstairs. He was not at all annoyed at what the servant had done. On the contrary, he complimented him for doing his duty.

One afternoon, I got a telephone message from him at my chambers. He said he would like to come that evening and dine with me and my family and he said that there should be no special dining arrangements and that he would sit down to dinner in Hindu style on *patlas*. I telephoned to my people to prepare some good dishes for dinner. He came and remained late in the night. We had very pleasant three hours.

His son the present Maharaja is a keen sportsman. He has an executive council and is devoting careful attention to the administration of the State.

UDAIPUR

In the year 1935, a serious dispute arose between the two sects of Jains, the Digambars and Swetambars. A few miles from the town of Udaipur, there is an ancient temple of Keseriaji. This deity is worshipped by both these sects of Jains though their religious tenets differ very widely. On the top of the temple, there is affixed what is called *Dhwaja Dand,* i.e., wooden pole on which a flag is flown. This flag staff was destroyed by lightning and it became necessary to put up a new one. The question then arose whether it was the right of Swetambaris or Digambars to consecrate and put up the staff.

The last occasion on which the staff had been replaced was about 75 years ago. Each sect was claiming that it was entitled to put up the staff according to its own religious rites. This question had to be decided and the

Udaipur Durbar appointed a Commission to enquire into the matter and report to the Durbar its finding. I appeared for the Swetambar sect represented by the firm of Anandji Kalyanji at Ahmedabad, and Mr. M. A. Jinnah appeared for the Digambar Jains. In my view, this was a fruitless quarrel and as I knew the leaders of both parties, I talked to them to come to some reasonable agreement. The accident to the staff had happened only after an interval of 75 years and a similar accident was not likely to happen for another 100 years. I therefore suggested to them to exercise the right of putting up the staff by alternate turns or to put up the staff jointly. I however found it impossible to make them agree. Mr. Trench, an I.C.S. officer who was the head of the Revenue Department there, was the Chairman of the Commission and another officer and a Chieftain were the other members.

The enquiry dragged on for nearly six weeks by which time, I was quite fed up with the affair. The Commission sat for four hours a day and nearly half an hour at the beginning of every sitting was taken up in clearing the room of pigeons that used to inhabit every conceivable nook in the room. After the commission had gone on for six weeks, there was an adjournment and at the adjourned hearing neither myself nor Jinnah appeared. Mr. Munshi appeared for the other side and my son Motilal appeared for my side. The Commission very soon after the conclusion of the hearing made its report to the Durbar. But the Udaipur Durbar has not yet passed any orders on the report. In the *interim*, the Durbar has put up the staff pending the decision on the findings of the Commission.

Trench told me a very amusing story. A German Count had stayed at the Guest House for over a fortnight. Several bottles of whisky and aerated waters were consumed by him. The person in charge of the Guest House in sending his monthly account of drinks in the vernacular language, instead of writing જરમન કાઉન્ટ (German Count) wrote જરમનકા ઊંટ (German Camel). The checking depart-

ment promptly enquired why whisky and aerated waters were given to a camel. It was after considerable correspondence that the mystery was solved when it was made clear that it was a live German Count that had consumed the whisky and not a camel.

The Udaipur ruling family belongs to the Sisodia clan of Rajputs which ranks very high among them.

ICHHALKARANJI

The founder of the Ichhalkaranji principality in Southern Maratha country was Naro Mahadev Joshi who became a favourite of Santaji Ghorpade, the renowned Maratha warrior and a distinguished lieutenant of Shivaji, founder of the Maratha Empire. The relations between Santaji and Naro Mahadev became so close that Santaji regarded Naro as his adopted son and Naro adopted the surname of Ghorpade. After the death of Santaji, Naro looked after the family of Santaji. Naro was succeeded by his son Venkatrao who married Anubai, the Peshwa's sister. It was during the time of Venkatrao and his son Narayenrao that Ichhalkaranji rose to great importance mainly owing to the organising capacity of Anubai, and acquired various territories in *Inam.*

After several generations Narayen Venkatrao who was then the head of the Ichhalkaranji family was invited by the British representative at Poona for the purpose of entering into a treaty with the British Government similar to the treaties that were entered into with the other Maratha Chiefs like Sangli, Miraj, Jamkhandi etc. Narayen, however, for some reason or other did not go to see the British representative with the ultimate result that Ichhalkaranji never got its proper status and position and became subordinate to Kolhapur.

In the succeeding generations on several occasions, the head of the Ichhalkaranji family was supplied by adoption. In 1864, a boy from the Huprikar family was taken in adoption and a heavy *najrana* was imposed by the Kolha-

pur Durbar. In August 1876, Narayenrao, the recently deceased Chief of Ichhalkaranji, was adopted. Narayenrao studied at the Elphinstone College when I was also a student at that college. The acquaintance that began then between him and me ripened into closer association which lasted till his death. We were together in the Bombay Legislative Council for many years. He made a very useful member of the Council and co-operated with the popular representatives. I did legal work for him all throughout. In recent years, I also did legal work for the Kolhapur State from time to time but it was always the understanding that in any matter which affected Ichhalkaranji, I would be available to Ichhalkaranji and not to Kolhapur.

The Chief married in 1886 but there was no issue of the marriage. He was pressed by some of his well-wishers to enter into a second marriage but he declined to do so. With the permission of the Kolhapur and British Governments, he adopted as his son, the son of his natural brother. That youth had a brilliaint academic career having passed his M.A. examination but he died leaving two sons. Both the sons, however, died within a short period and so the question of succession again cropped up. On this occasion one Vinayakrao Ghorpade applied to the Kolhapur Durbar that his claim for adoption by Ichhalkranji should be considered.

The Kolhapur Durbar appointed Mr. Norman who was Judicial Commissioner in Kathiawar to investigate the claim. I appeared before Mr. Norman for Ichhalkaranji who was disputing the relationship that Vinayakrao claimed. The enquiry lasted for over two weeks and Norman held that the claimant was descended from one Narsing Rao who was regarded as an adopted son of Naro Mahadev. Against this decision, the Chief of Ichhalkaranji appealed to the Government of India and the Secretary of State who upheld the decision of Norman with regard to the relationship of Vinayakrao. They however stated that this did not mean that at the time when the question of selec-

tion of a boy for adoption would come up, the choice of the Ichhalkaranji Chief would be restricted to Vinayakrao or to any other boy. After the death of the Chief, his widow, it is understood, has moved the British Government to be allowed to select a boy for adoption.

HYDERABAD (Deccan)

In the latter part of 1941, His Exalted Highness the Nizam graciously wired to me saying that he would be glad to see me if I could make it convenient to go to Hyderabad. I replied to the effect that on my way back from Madras where I had to go to attend the annual session of the Liberal Federation, I would break journey at Hyderabad and see His Exalted Highness. I stayed at Hyderabad for four days and was well looked after in the State Guest House.

During my stay H.E.H. gave me three interviews during which he talked about important matters affecting the political situation in India. I found H.E.H. well-informed and taking a keen interest in Indian political progress. I visited the Osmania University which is the only University in India where instruction in higher education is given through the medium of the vernaculars. Hyderabad has made wonderful progress in education, public health, engineering undertakings, waterworks and all matters of public utility. The war effort of Hyderabad has been magnificient and the State has made big plans for post-war development.

MYSORE

In May-June 1929, I was engaged by the Mysore Durbar to represent them before the Board of Arbitrators that had been appointed by the Government of India to decide the dispute that had arisen between the Mysore State and the Madras Government regarding the waters of the Cauvery river. The Cauvery river originating in the province of Coorg close to Mysore territory runs through districts forming part of the Madras Presidency. At Srirangam

island, it divides itself into two, one branch being called the Cauvery and the other the Coleroon. Near the eastern end of Srirangam Island, the Cauvery proper breaks up into two parts one being called the Cauvery and the other the Vennar. Further down, the Cauvery and the Vennar break up into various different channels and irrigate what is known as the Cauvery delta in the Tanjore District.

In 1892, an agreement was arrived at between the two Governments, clause three of which provided that when the Mysore Government desired to construct any new irrigation reservior, they were to obtain the previous consent of the Madras Government, and the Madras Government were bound not to refuse such consent except for the protection of its prescriptive rights already acquired and actually in existence. The existence, extent and nature of such rights and the mode of exercising them were to be determined in accordance with the law on the subject of prescriptive use of water, and in accordance with what was fair and reasonable under all the circumstances of each individual case. The agreement further provided that in case of differences between the two Governments, the matter should be referred to the final decision of Arbitrators appointed by both the Governments or by the Government of India. In 1910, Mysore was desirous of constructing a reservoir which is now known as Krishnarajasagar and applied for the consent of the Madras Government.

After considerable negotiations and references to arbitration and Joint Committees of officers of both parties, the impounding of water by Mysore at Krishnarajasagar during irrigation period and the passing of water to Madras were agreed to be regulated finally by a certain formula. This was based on the average of joint gauging at a certain point taken for a period of ten years beginning from 1917, provision for the interim period being mutually agreed upon.

After seven years gauges had been recorded, about January 20, 1924, there were extraordinary and un-

precedented floods in the Cauvery which seriously damaged some of the controlling works and very materially altered the physical configuration of the river. The Cauvery Dam itself was destroyed to the extent of 900 feet. The bed of the river both above and below the dam was heavily scoured and in consequence the bed which was at a mean level of 2.85 feet above the crest of the dam since 1902 sank to about a foot below the crest of the dam, thus making a total difference of 5.85 feet as compared with the conditions of the bed before the breaches. It was contended by the Mysore Government that when the two Governments entered into the arrangement above referred to it was on the assumption that the control works of the river bed and banks would exist in the same state in which they had been for a long number of years within the knowledge of the parties, and that as such a material alteration in the existing state of things had taken place by act of God, the gauging of the 2½ years subsequent to the floods, to make up for the full period of 10 years, should not be taken into account in framing the impounding formula.

As under the abonormally altered conditions the quantity impoundable by Mysore would be reduced, it suggested that the gaugings of 7½ years only should be taken into account. The Madras Government controverted this position, and the Government of India appointed a Board of Arbitrators consisting of Sir Arthur Page, a Judge of the Calcutta High Court and one nominee of each of the two Governments concerned. The Mysore Government nominated Mr. Forbes, the head of the Electric Engineering Department and the Madras Government nominated Mr. Howley one of their Chief Engineers.

I went to Bangalore and was there taking instructions for nearly a fortnight. The arbitration board was to meet at Ooty. Allady Krishnaswamy Iyer appeared for the Government of Madras. Two or three days after the proceedings started, Sir Arthur Page told the parties that instead of having three Arbitrators, it would be better if

the matter was left to his sole arbitration, the other two gentlemen merely acting as assessors to assist him by their technical knowledge. This proposal was referred to the Government of India who sanctioned the same. The pro-

Before the time came for my final reply, it was arranged that further proceedings should be held in Mysore. While we were at Ooty negotiations had been started for an amicable settlement of the dispute. The matter was further pursued at Mysore and ultimately through the good offices of Mr. Pearce, the Resident, a settlement was arrived at which was signed by the representatives of both Governments on June 17, 1929, whereby the quantity of water to be given to Madras was fixed little in excess of the average which the gauges for 7½ years would have given.

It was on this occasion that I first came into contact with the late Maharaja of Mysore and his Dewan, Sir Mirza Ismail. The Maharaja was a pious and unassuming person and acted as a constitutional ruler, not interfering with the administration which was left to the proper departments. Sir Mirza Ismail I found to be a very clever and hard-working administrator devoid of any communal bias and running the administrative machine in a very efficient manner. The State of Mysore has been very fortunate in having secured for a long number of years a succession of very capable Dewans like Rangacharlu, Sheshadri Iyer, Visweshwaraya, Mirza Ismail and N. Madhava Rao the present Dewan. The industrial development in Mysore State may well be an example for British India.

TRAVANCORE AND COCHIN

Travancore is a progressive State in Southern India. H. H. the Maharaja who is about 33 years of age is a well-educated, well-informed and enlightened ruler. The co-operation of his enlightened mother, Her Highness the Maharani Setu Parvathibai is very beneficial. The State has the good fortune of having as Dewan Sir C. P. Ramaswamy Aiyer who has a long record of public and admi-

nistrative experience both in British India and Indian States. These three personalities form a happy combination. The civil list of His Highness the Maharaja is not more than Rs. 12 Lakhs a year being only 2.58 per cent of the entire revenue of the State which is 5 crores. This is an example which some of the Indian rulers would do well to follow.

The Travancore Government some years ago took the exemplary step of ordering that all Hindu temples should be open for worship to the untouchables and depressed classes. This order is being obeyed and the caste Hindus have acquiesed in it. The State has a bicameral legislature.

Education is far advanced in Travancore. The percentage of literates in the entire population is a little over 47. This is in favourable contrast with British India where the percentage of literates is still not more than 10. Recently a scheme of free and compulsory education has been announced. In 1938, the University of Travancore was established with the faculties of Arts, Science, Law, Education and Engineering.

The Industrial development in the State is being steadily encouraged and various industries including Textile, Rubber etc., are springing up.

Travancore has been a participant in the development of the Port of Cochin which has now become an important major port. It was during the governorship of Lord Willingdon in Madras that an agreement was entered into between the Governments of Cochin, Travancore and Madras whereby the three governments were to share equally the cost of developing the Port and also the profits earned. After a certain stage had been reached in the development, some difference arose between Travancore and Cochin in 1932 regarding the further stages of development. The Government of India for the settlement of these differences gave a hearing to the two States. Mr. C. G. Herbert I.C.S., the then Dewan of Cochin wanted

me to appear for Cochin at the conference to be held at Simla in the matter, where Sir Joseph Bhore, the then Commerce Member of the Viceroy's Council, was to hear the parties concerned. This call came while I was lying ill in April 1932. I therefore got the hearing postponed to an early date in May. As I had not recovered my normal strength by that time, I requested Jayakar to come with me to assist me. Jayakar conforming to the best traditions of the Bar, readily agreed. He said "If my senior wants my help it is my duty to give it." We went to Simla and had two hearings of the case. I appeared for Cochin at that hearing and Sir C. P. Ramaswamy Aiyer who was then the Legal Adviser to Travancore appeared for Travancore. The matter was ultimately amicably settled. Later, when the Government of India's new policy about customs and ports was inaugurated, a final settlement was arrived at in 1934 whereby the Government of Madras went out of the pool altogether and it was arranged that in any year in which the net customs revenue did not exceed 49½ Lakhs, Cochin, Travancore and the Government of India were to share equally. If the revenue in any year exceeded 49½ Lakhs different proportions of sharing were fixed.

MORVI

I knew Sir Waghji and our relations were very friendly. I also used to do some legal work for him. He got involved in litigation in the High Court in the winding up of the Indian Specie Bank of which he was one of the Directors. With the present ruler Maharaja Sir Lukhdhirji, my relations are equally friendly and over a considerable period, I used to appear for the Maharajasaheb in the High Court in litigation arising out of the large number of immovable properties that had been acquired by the late ruler. Under the present Maharaja, Morvi has been considerably modernised and the port of Navlakhi has become an important port in Kathiawar.

ATTACHMENT OF STATES

In Kathiawar, besides 17 States which are called Salute States there are about 280 smaller States, the majority of whom are unable to maintain proper standards of administration and provide necessary amenities for their subjects. Their jurisdiction, both civil and criminal, was very limited, and the residuary jurisdiction was exercised by courts established by the British Government under the Foreign Jurisdiction Act. An executive order of April 16, 1943 was issued by the Crown Representative with the concurrence of the Secretary of State for India attaching these smaller states to Baroda and some of the larger States in Kathiawar, and transferring to the Courts of the attaching States civil and criminal jurisdiction in the attached States hitherto exercised by the British Courts established under the Foreign Jurisdiction Act.

In pursuance of this order, Instruments of Attachment were issued by the attaching States to be signed by the rulers of the attached States. The small taluka of Bhadwa challenged these orders and a special Bench of the Court of the Judicial Commissioner in Kathiawar, constituted by the Crown Representative to decide the issue, declared the scheme of attachment and the transfer of residuary jurisdiction exercised by British Courts established under the Foreign Jurisdiction Act to the Courts of the attaching States, illegal and *ultra-vires* on the ground that under Section 2 of the Government of India Act of 1935, paramountcy could be exercised only through the channel laid down in the statute and the Letters Patent under the Foreign Jurisdiction Act of 1937, and could not be transferred to the Officers not appointed and controlled by the Crown Representative. I and Mr. G. N. Joshi represented Bhadwa, and Mr. Coltman appeared for the Crown Representative.

Under Sec., 294 (I) of the Government of India Act His Majesty may relinquish any jurisdiction in Indian States but cannot transfer it to some one else. In order to legalise the scheme of attachment and the transfer of jurisdiction, the India (Attachment of States) Act of 1944 was enacted by Parliament whereby the Crown Representative has been empowered to attach to other States all States in the Western India States Agency or the Gujerat States Agency not mentioned in Division 1 to 16 of the First Schedule to the Government of India Act of 1935.

It is extremely doubtful whether it was competent to Parliament to pass the enactment. The territories of Indian States are not British territories and the subjects of Indian States are not British subjects, and therefore, Parliament, it is contended, cannot legislate about them. This position was accepted during the debates on the Government of India Bill and is recognised in the Act of 1935. The entry of Indian States into the Federation has under the Act been left entirely to their volition. The States can come into the Federation if they so desire, when they desire within 20 years, and to the extent they desire.

The present step taken by Parliament entirely changes the position accepted till now and affects the constitutional position of all states, big and small. Under the definitions of "Indian State" and "Ruler" under the Government of India Act, the big as well as smaller States have the same legal status and if Parliament could legislate about small States, they could equally do so with regard to bigger ones. That British Statutes cannot be applied to foreigners outside British territory is only a rule of constitutional law. "If the legislature of England in express terms applied its legislation to matters beyond its legitimate capacity, an English Court must obey the English legislature, however contrary to international comity such legislation may be." (*Niboyet* vs. *Niboyet* 1878, 4 P.D.).

Parliamentary enactments are not subject to judicial review in any part of the British Empire. Parliament refrains from legislating for foreign territory and foreign subjects for the simple reason that such legislation would be contrary to the principles of international law and might provoke retaliation. But the principles of international law have no application to the relationship between the Indian States and the Crown. If Parliament chooses to legislate, there is no forum in which the validity of such legislation can be tested.

The object behind the attachment scheme is good but it is extremely doubtful whether in practice that object will be attained. Attaching smaller States to bigger States where personal and autocratic rule still prevails will not, it is apprehended, bring the desired benefits to the subjects of the attached States. It would have been better to have attached them to British India. To this idea, objection is raised that these smaller States are so scattered in Kathiawar and away from British districts that it would not be conducive to proper administration to attach them to the Government of Bombay.

This objection is not at all serious. Some portions of Baroda territory have intervening between them portions of Bombay Presidency and some Kathiawar States. Further, it is strange that the subjects of the small States for whose advantage and benefit the attachment scheme is proposed to be undertaken have never been consulted in the matter. They are being handed over like chattel to the attaching States. As far as judicial administration is concerned they lose the protection of British Courts established under the Foreign Jurisdiction Act and their rights and liberties are henceforward to have the protection of the Courts of the States to which they are attached. It is felt that a good many of the subjects of the smaller attached states would prefer to be attached to British India instead of being attached to some States in whose administration the people have no voice.

FUTURE OF INDIAN STATES

India sooner or later, probably much sooner than many people imagine, will get complete self-government. What is to be the position of rulers of Indian States in that free India? They with their noble and chivalrous traditions can play a great part if they will only visualise the altered world in which they are living and the requirements of such world. When the idea of United States of Europe is finding expression and when a world union of nations is suggested, it is not possible that the Indian States scattered in all parts of India can remain in isolation from each other and from the rest of India as at present.

The states cannot in their own interests cling to their full sovereignty but must surrender part of it for the common good of India. When India becomes a self-governing Dominion, it is difficult to understand how the present relations of the Indian States with the British Crown can be maintained as they stand today. If they insist upon the Crown fulfilling its obligations to them under their treaties, it follows that the British Crown must maintain some armed forces to see that these treaties are not in any manner violated. The stationing of any British troops in India subject to the orders of any authority outside self-governing India is an impossible position.

The idea that these Treaties are sacrosanct and cannot in any manner be modified to suit altered conditions is an anachronism in a fast changing world in what is called the atomic age. The States have, therefore, to come into the Indian Union with proper representation commensurate to their position and importance, and the mutual relations of the Indian Union with the States as units in that Union have to be settled by agreement on a fair and equitable basis.

The idea that the representation of Indian States in the Central Legislature of the Indian Union should be by persons nominated by the rulers of the States must be ruled out as antiquated. When the representatives of what is now British India will be elected by the people, the State subjects cannot be asked to be satisfied to be represented by nominees of their rulers.

Further, the administration of the Indian States by the personal rule of the rulers cannot be maintained for any appreciable length of time. The subjects of Indian States will naturally demand the same rights of representation and voice in the administration that would be enjoyed by the people of what is now British India. There are no doubt several progressive Indian States that have legislatures with elected members and a proper judicial system but it cannot be claimed that the subjects enjoy the standard of freedom and voice in the administration that is enjoyed by people in British India.

The Indian Princes have been steadfastly loyal to the British Crown. It would indeed be a glorious gesture on their part if they make up their minds to follow the example of the King of England and become constitutional rulers like him. A good many of the rulers of the premier States in India are realists and long-sighted and one expects that they will adapt themselves to changing conditions and play a very useful and leading part in the new free India that is to emerge in the near future.

CONCLUSION

My task is done. As the title of the book implies, I have narrated my recollections of facts and events in the spheres of law, politics, legislatures, education and local self-government in which I have played my part for more than fifty years, and my reflections on such facts and events. With the latter some of my readers will agree and others might disagree but I can assure all that those reflections are the result of honest convictions and balanced thinking. If this volume helps the younger generation to form a correct estimate of events and to guide their thoughts in the right directions, I shall feel amply repaid.

What a marvellous change has come over Indian thoughts and views during this long period. I remember in the eightees of the last century, sitting on the verandah of my house at Ahmedabad, hearing two persons in the street vehemently arguing regarding some business dispute that had arisen between them. One said to the other: "You cannot get away with it like that. Remember there is no longer Peshwa rule here, it is the rule of the British Queen." This was symbolical of the faith people had in those days in British justice. Leaders of the Indian National Congress till as late as 1915 talked of the British connection as a benign dispensation of Providence. Now we are in the days of slogans like "Quit India" and "Quit Asia."

Wise statesmanship of Macaulay and Elphinstone who dreamt of the proud day for England when India would demand and be given self-government gave place to narrowness of vision and subordination of Indian interests to British interests as reflected in the administration and the

Government of India Acts of 1919 and 1935, creating as their sequel the demand for the complete severance of the British connection.

India is determined to be free within the British Commonwealth if she is accorded an honourable place in it, or without it if that is the only alternative left to her. It is distinctly in the interests of India that she should remain in the British Commonwealh with full freedom like that enjoyed by Canada and Australia. This is so because India would take considerable time to build up adequate naval and air forces and in the meantime it is to her advantage to have the protection of the Commonwealth navy and Air arm.

Unfortunately, however, the unity among all the Indian peoples that existed at one time and gave fair promise of continuance has given place to distrust and anatagonism between different sections and communalism has given place to nationalism. One shudders to think of the ultimate consequences of this state of things. The causes of this unfortunate position and the possible ways of resolving it have been referred to in previous pages.

One can only pray that Providence will give wisdom, tolerance, spirit of adjustment and compromise and statesmanship to those in whose hands the shaping of India's future destiny lies and that India in the fast changing world will occupy the position and influence in the counsels of the World Federation to be, that her history, cuture and noble traditions entitle her to.

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